KF26
.5
W48
945
104

S. HRG. 104–869, VOL. I

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

Y 4. B 22/3: S. HRG. 104-869/
V. 1
Investigation of Whitewater Develop...

HEARINGS

SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

VOLUME I

ON

THE INQUIRY INTO WHETHER IMPROPER CONDUCT OCCURRED REGARDING THE WAY IN WHICH WHITE HOUSE OFFICIALS HANDLED DOCUMENTS IN THE OFFICE OF WHITE HOUSE DEPUTY COUNSEL VINCENT W. FOSTER, JR., FOLLOWING HIS DEATH

JULY 18, 19, 20, 25, 26, AND 27, 1995
AUGUST 1, 2, AND 3, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPOSITORY
MAR 24 1998
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

S. HRG. 104–869, VOL. I

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

VOLUME I

ON

THE INQUIRY INTO WHETHER IMPROPER CONDUCT OCCURRED REGARDING THE WAY IN WHICH WHITE HOUSE OFFICIALS HANDLED DOCUMENTS IN THE OFFICE OF WHITE HOUSE DEPUTY COUNSEL VINCENT W. FOSTER, JR., FOLLOWING HIS DEATH

JULY 18, 19, 20, 25, 26, AND 27, 1995
AUGUST 1, 2, AND 3, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE
41–371 CC WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055157-9

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ALFONSE M. D'AMATO, New York, *Chairman*

RICHARD C. SHELBY, Alabama
CHRISTOPHER S. BOND, Missouri
CONNIE MACK, Florida
LAUCH FAIRCLOTH, North Carolina
ROBERT F. BENNETT, Utah
ROD GRAMS, Minnesota
PETE V. DOMENICI,* New Mexico
ORRIN G. HATCH, Utah
FRANK H. MURKOWSKI, Alaska

PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
JOHN F. KERRY, Massachusetts
RICHARD H. BRYAN, Nevada
BARBARA BOXER, California
CAROL MOSELEY-BRAUN, Illinois
PATTY MURRAY, Washington
PAUL SIMON, Illinois

HOWARD A. MENELL, *Staff Director*
ROBERT J. GIUFFRA, JR., *Chief Counsel*
PHILIP E. BECHTEL, *Deputy Staff Director*
STEVEN B. HARRIS, *Democratic Staff Director and Chief Counsel*

MICHAEL CHERTOFF, *Special Counsel*
RICHARD BEN-VENISTE, *Democratic Special Counsel*
ALICE S. FISHER, *Deputy Special Counsel*
LOUIS J. GICALE, *Deputy Special Counsel*
EVERETT C. JOHNSON, JR., *Deputy Special Counsel*
JAMES B. COMEY, *Deputy Special Counsel*
NEAL E. KRAVITZ, *Democratic Principal Deputy Special Counsel*
LANCE COLE, *Democratic Deputy Special Counsel*

STEVEN BANKLER, *Investigative Accountant*
H. CHRISTOPHER BARTOLOMUCCI, *Associate Special Counsel*
GABRIEL BERG, *Democratic Legal Intern*
JULIUS J. BONAVOLANTA, *Special Investigator*
MARK J. BRENNER, *Assistant Special Counsel*
ROBERT H. BUCHANAN, *Staff Intern*
DAVID CARLE, *Democratic Press Secretary*
WILLIAM S. CASTLE, *Senior Investigator*
LORI A. CONLON, *Administrative Assistant*
VINCENZO A. DELEO, *Special Investigator*
VIET D. DINH, *Associate Special Counsel*
DOUGLAS A. EPSTEIN, *Democratic Counsel*
CHRISTOPHER FARRO, *Staff Intern*
STEVEN H. FROMEWICK, *Democratic Assistant Special Counsel*
SOPHIA HARDY, *Democratic Intern*
NGUYEN-HONG HOANG, *Democratic Legal Intern*
DAVID KAUFMAN, *Staff Intern*
DAVID M. LUNA, *Democratic Law Clerk*
JOSEPH MITCHELL, *Staff Intern*
TIMOTHY P. MITCHELL, *Democratic Professional Staff Member*
MICHAEL P. O'CALLAGHAN, *Associate Special Counsel*
RICHARD J. O'CONNELL, *Special Investigator*
JAMES S. PORTNOY, *Democratic Associate Special Counsel*
JAMES F. REDFERN, *Special Investigator*
ANDREW M. SCHAUER, *Democratic Assistant Special Counsel*
JENNIFER M. SWARTZ, *Senior Investigator*
MEGAN H. TINKER, *Senior Investigator*
AMY R. WENDT, *Democratic Staff Assistant*
JEFFREY H. WINTER, *Democratic Special Assistant*
STEPHANIE H. WOMACK, *Democratic Special Assistant*

---

*Appointed to replace Senator Bill Frist pursuant to S. Res. 184 (October 12, 1995).

PETER C. BARRETT, *Staff Assistant*
YAEL BELKIND, *Democratic Staff Assistant*
SLOAN DEERIN, *Staff Assistant*
MITCHELL FEUER, *Democratic Counsel*
EMILY L. FRYDRYCH, *Assistant to the Democratic Staff Director*
MARTIN J. GRUENBERG, *Democratic Senior Counsel*
MARK D. HOFFMAN, *Executive Assistant to the Staff Director*
GLENN IVEY, *Democratic Counsel*
JOSEPH A. JIAMPIETRO, *Counsel*
JOSEPH R. KOLINSKI, *Chief Clerk/Computer Systems Administrator*
ANDREW LOWENTHAL, *Democratic Professional Staff Member*
DORIS R. MAHONEY, *Executive Assistant*
CHARLES MARR, *Democratic Professional Staff Member*
E. RICHARD MILLS, *Press Secretary*
JOSEPH N. MONDELLO, JR., *Counsel*
PATRICK A. MULLOY, *Democratic Chief International Counsel*
DOUGLAS R. NAPPI, *Counsel*
LENDEL PORTERFIELD, *Financial Institutions Subcommittee Staff Director*
AMY C. RANDEL, *Democratic Staff Assistant*
SARAH BLOOM RASKIN, *Democratic Counsel*
MADELYN SIMMONS, *Professional Staff Member*
PAUL WEECH, *Professional Staff Member*

EDWARD M. MALAN, *Editor*
GEORGE E. WHITTLE, *Editor*
IRENE C. WHISTON, *GPO Editorial Assistant*
DONNA LEE KRAUSE, *GPO Editorial Assistant*

CONTENTS

VOLUME I

TUESDAY, JULY 18, 1995

	Page
Opening statement of Chairman D'Amato	1
Opening statements, comments, or prepared statements of:	
Senator Mack	5
Senator Sarbanes	8
Senator Dodd	11
Senator Hatch	14
Senator Kerry	17
Senator Faircloth	19
Senator Bryan	21
Senator Bond	22
Senator Boxer	25
Senator Grams	27
Senator Moseley-Braun	29
Senator Shelby	31
Senator Murray	33
Senator Bennett	34
Senator Simon	36
Senator Murkowski	37
Senator Frist	39

WITNESS

Webster Hubbell, former Associate Attorney General, U.S. Department of Justice	41

APPENDIX

Document DKSN 000229	62
Document DKSN 000236	63
Document DKSN 000234	64
Document DKSN 000087	65
The White House, West Wing, First Floor	66
The White House, West Wing, Second Floor	67
Document DKSN 000093	68
Document DKSN 000182	69
Document DKSN 000183	70
Document DKSN 000237	71

WEDNESDAY, JULY 19, 1995

Opening comments of Chairman D'Amato	73
Opening statements, comments, or prepared statements of:	
Senator Shelby	73
Senator Sarbanes	78
Senator Dodd	78
Senator Bond	81

Page

Opening statements, comments, or prepared statements of—Continued
Senator Kerry 83
Senator Grams 87
Senator Bryan 91
Senator Hatch 98
Senator Boxer 100
Senator Moseley-Braun 108
Senator Bennett 111
Senator Faircloth 113
Senator Murray 114
Senator Simon 120

WITNESS

Webster Hubbell, former Associate Attorney General, U.S. Department of Justice 73

APPENDIX

Document DKSN 000229 139
Document DKSN 000236 140
Document DKSN 000087 141
Document DKSN 000093 142

THURSDAY, JULY 20, 1995

Opening comments of Chairman D'Amato 143
Opening statements, comments, or prepared statements of:
Senator Sarbanes 143
Senator Dodd 145
Senator Grams 156
Senator Shelby 170
Senator Faircloth 179
Senator Boxer 182
Senator Bond 185
Senator Murkowski 186
Senator Bryan 188
Senator Kerry 196
Senator Moseley-Braun 200
Senator Simon 203

WITNESSES

Cheryl A. Braun, Sergeant, U.S. Park Police 146
Prepared statement 212
John C. Rolla, Detective, U.S. Park Police 146
Prepared statement 213
Robert H. Hines, Major, U.S. Park Police 147
Prepared statement 214

APPENDIX

Deposition Exhibit, Rule 2:
U.S. Department of the Interior, National Park Service, U.S. Park Police, Criminal Investigations Branch, Death Investigations Guideline Manual 216
Results of investigation, July 21, 1993, Bernard Nussbaum 232

TUESDAY, JULY 25, 1995

Opening comments of Chairman D'Amato 233

Page

Opening statements, comments, or prepared statements of:
Senator Sarbanes 233
Senator Faircloth 235
Senator Simon 237
Senator Bond 256
Senator Dodd 259
Senator Grams 262
Senator Bryan 266
Senator Shelby 268
Senator Boxer 279
Senator Mack 282
Senator Hatch 291
Senator Murkowski 298
Senator Murray 303
Senator Kerry 322

WITNESSES

Mark D. Gearan, Assistant to the President and the White House Director of Communications 234
Prepared statement 345
Sylvia M. Mathews, former Special Assistant to the President for Economic Policy 234
W. David Watkins, former Assistant to the President for Management and Administration 235

AFTERNOON SESSION

Patsy L. Thomasson, former Director of the Office of Administration and Special Assistant to the President 310

APPENDIX

Document Z 000140 346
Document Z 000651 347
Document Z 000653 348
Washington Times, July 23, 1993 349
Document Z 000139 351
Document Z 000464 352
Document Z 000465 353
Document Z 000467 354

WEDNESDAY, JULY 26, 1995

Opening comments of Chairman D'Amato 355
Opening statements, comments, or prepared statements of:
Senator Sarbanes 356
Senator Grams 376
Senator Shelby 385
Senator Kerry 388
Senator Faircloth 392
Senator Boxer 394
Senator Bond 399
Senator Moseley-Braun 401
Senator Simon 409
Senator Dodd 412
Senator Mack 444

WITNESSES

Henry Peter O'Neill, Jr., U.S. Secret Service Uniformed Division, Department of Secret Service 356

Page

AFTERNOON SESSION

Margaret A. Williams (Maggie), Assistant to the President and Chief of Staff to the First Lady 416
Evelyn Simonowitz Lieberman, Deputy Assistant to the President and the Deputy Press Secretary for Operations at the White House 418
Edward S.G. Dennis, Jr., Counsel to Margaret A. Williams 419
Prepared statement 483
Results of polygraph test of Margaret A. Williams 486

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Senator Boxer's submission of contradictions, inconsistencies and changes in testimony of Henry Peter O'Neill, Jr., Secret Service Officer 489

APPENDIX

Document Z 000598 493
The White House, West Wing, First Floor 494
The White House, West Wing, Second Floor 495
The review of documents in Vincent Foster's office:
July 21, 1993 496
July 22, 1993 497
Affidavit of Edward S.G. Dennis, Jr., Counsel to Margaret A. Williams 498
The Stirling Corp., William B. Anderson, Jr., polygraph examiner, questions and results of Margaret A. Williams 501
Resume of polygraph examiner William B. Anderson 503
Contradictions, inconsistencies and changes in testimony of Henry Peter O'Neill, Jr., Secret Service Officer 504

THURSDAY, JULY 27, 1995

Opening comments of Chairman D'Amato 509
Opening statements, comments, or prepared statements of:
Senator Frist 510
Senator Sarbanes 520
Senator Murkowski 532
Senator Dodd 540
Senator Kerry 542
Senator Hatch 563
Senator Simon 578
Senator Grams 580

WITNESSES

Michael L. Spafford, attorney, Swidler & Berlin 509
Roger C. Adams, Counsel to the Deputy Attorney General, Criminal Division, U.S. Department of Justice 544
Donald A. Flynn, Special Agent, U.S. Secret Service 544
Scott Salter, Special Agent, Federal Bureau of Investigation 544

APPENDIX

Washington Post, July 23, 1993 586
Confidential memorandum to James Hamilton from Michael L. Spafford, July 23, 1993 588
Miscellaneous handwritten notes 593
Office of Vincent Foster 602
Document FBI 00000036 603
Document FBI 00000037 604
Document Z 000001 605
Document Z 000002 606
Sketch of the White House office 607

Page
Document F 000149 608

TUESDAY, AUGUST 1, 1995

Opening comments of Chairman D'Amato 609
Opening statements, comments, or prepared statements of:
Senator Sarbanes 609
Senator Murray 611
Senator Bond 634
Senator Dodd 637
Senator Mack 641
Senator Grams 643
Senator Simon 644
Senator Shelby 652
Senator Faircloth 658
Senator Bennett 663
Senator Kerry 696
Senator Murkowski 700

WITNESSES

Deborah L. Gorham, former Executive Assistant to Deputy Counsel to the President, Vincent Foster 612
Linda R. Tripp, former Executive Assistant to the Counsel to the President 613

AFTERNOON SESSION

Robert E. Langston, Chief, U.S. Park Police 671
Prepared statement 722
Peter W. Markland, Sergeant, U.S. Park Police 672
Charles W. Hume, Captain, U.S. Park Police 673

APPENDIX

Miscellaneous handwritten notes 723
Document Z 000140 732
Review of documents from Vincent Foster's office 733
Deposition Exhibit 1—Markland 735
Interview: Steven Neuwirth 736
Document Z 001104 738
Document Z 001109 739
Document Z 001118 740
Document Z 001123 741
Document Z 001206 742
Document Z 001207 743
Document Z 001208 744
Document Z 001209 745
Document Z 001210 746
Document Z 001211 747
Document Z 001212 748
Document Z 001213 749
Document Z 001214 750

WEDNESDAY, AUGUST 2, 1995

Opening comments of Chairman D'Amato 751
Opening statements, comments, or prepared statements of:
Senator Bond 751
Senator Shelby 764
Senator Sarbanes 775
Senator Hatch 786

Page

Opening statements, comments, or prepared statements of—Continued
Senator Bryan 792
Senator Mack 796
Senator Murray 799
Senator Moseley-Braun 800
Senator Grams 802
Senator Simon 804
Senator Kerry 812

WITNESSES

Louis G. Hupp, Fingerprint Specialist, Federal Bureau of Investigation 752
Philip B. Heymann, former Deputy Attorney General, U.S. Department of Justice 762

APPENDIX

Document Z 000447 820
Washington Post, July 23, 1993 821
Document FBI 00000065 823
Document FBI 00000080 824
Document FBI 00000067 825
Document FBI 00000081 826
Document F 000166 827
Deposition Exhibit PH #1 828

THURSDAY, AUGUST 3, 1995

Opening comments of Chairman D'Amato 833
Opening statements, comments, or prepared statements of:
Senator Bond 840
Senator Bennett 842
Senator Dodd 845
Senator Boxer 847
Senator Murray 848
Senator Kerry 853
Senator Faircloth 855
Senator Sarbanes 875
Senator Murkowski 886
Senator Mack 894
Senator Frist 907
Senator Shelby 915
Senator Simon 920
Senator Grams 953

WITNESSES

Thomas Castleton, former Special Assistant to the White House Counsel 833
Carolyn Huber, Special Assistant to the President for Personal Correspondence 833
Clifford M. Sloan, former Associate Counsel to the President 858
Stephen R. Neuwirth, Associate Counsel to the President 860

APPENDIX

Interview: Steven Neuwirth 959
Document Z 000364 961
Document Z 000365 962
Document Z 000366 963
Document Z 000367 964
Document Z 000368 965
Document Z 000369 966

Page

Document Z 000370 967
Document Z 000371 968
Document Z 000372 969
Document Z 000373 970
Document Z 000374 971
Document Z 000375 972
Document Z 000376 973
Document Z 000377 974
Document Z 000378 975
Document Z 000379 976
Document Z 000380 977
Document Z 000340 978
Document Z 000621 979
Document Z 000622 980
Document Z 000953 981
Document Z 001104 982
Document Z 001109 983
Document Z 001118 984
Document Z 001123 985
Document Z 000354 986
Office of Vincent Foster 987
Senator Boxer's submission of Contradictions, Inconsistencies and Changes in Testimony of Henry O'Neill, Secret Service Officer 988

VOLUME II

MONDAY, AUGUST 7, 1995

Opening comments of Chairman D'Amato 993
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1007
Senator Faircloth 1015
Senator Dodd 1020
Senator Bennett 1025
Senator Kerry 1029
Senator Grams 1035
Senator Bryan 1038
Senator Simon 1046

WITNESSES

Thomas F. McLarty, former Chief of Staff to the President 993
Prepared statement 1070
John M. Quinn, Assistant to the President, Chief of Staff and Counsel to the Vice President 994
David R. Gergen, former Counsel to the President 994
C. William Burton, former Deputy Assistant to the President and Policy & Staff Director for the Chief of Staff to the President 995

APPENDIX

Office of Vincent Foster 1072
Detective J. Megby original report 1073
Document Z 000459 1074
Document Z 000514 1075
Document Z 000515 1076
Document Z 000951 1077
Document Z 001148 1078
Document Z 001149 1079
Handwritten notes of Stephen Neuwirth 1080
Document A 000139 1082
Document A 000140 1083
Document A 000141 1084

Page

TUESDAY, AUGUST 8, 1995

Opening comments of Chairman D'Amato 1085
Opening statements, comments, or prepared statements of:
Senator Bond 1085
Senator Sarbanes 1086
Senator Kerry 1093
Senator Boxer 1094
Senator Dodd 1098
Senator Murkowski 1106
Senator Shelby 1131
Senator Faircloth 1135
Senator Murray 1140
Senator Simon 1140
Senator Bennett 1149
Senator Moseley-Braun 1172

WITNESSES

Susan P. Thomases, Attorney at Law 1087
Bruce R. Lindsey, Deputy Counsel to the President, former Assistant to the President, Senior Advisor and Director of Presidential Personnel 1089

APPENDIX

Interview: Lisa Foster, on July 29, 1993, by Detective Peter W. Markland and Captain Charles Hume 1173
Interview: Elizabeth Braden Foster, on May 9, 1994, by her attorney, James Hamilton and Roderick C. Lankler, Deputy Counsel, Office of the Independent Counsel, Washington, DC 1176
Susan Thomases phone contacts on July 22, 1993 1195
Document DKSN 0001 1196
Document DKSN 000179 1197
Document DKSN 000180 1198
Document DKSN 000482 1199

WEDNESDAY, AUGUST 9, 1995

Opening comments of Chairman D'Amato 1201
Opening statements, comments, or prepared statements of:
Senator Hatch 1214
Senator Sarbanes 1225
Senator Kerry 1236
Senator Shelby 1240
Senator Bryan 1244
Senator Moseley-Braun 1253
Senator Bond 1265
Senator Simon 1270
Senator Dodd 1278
Senator Grams 1282
Senator Murray 1285
Prepared statement 1305
Senator Bennett 1298
Senator Boxer 1303

WITNESS

Bernard W. Nussbaum, former Counsel to the President of the United States . 1201

Page

APPENDIX

New Jersey Law Journal, December 5, 1995, "Nussbaum Defends Conduct as Counsel" 1306
Document Z 000514 1312
Document Z 000139 1313
Document F 000149 1314
Document F 000150 1315
Office of Vincent Foster 1316
Document F 000166 1317
Document Z 001104 1318
Document Z 001109 1319
Document Z 001118 1320
Document Z 001123 1321
Deposition Exhibit 1, Markland 1322
Document F 000160 1323
Document F 000163 1324

THURSDAY, AUGUST 10, 1995

Opening comments of Chairman D'Amato 1325
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1325
Senator Dodd 1326
Senator Boxer 1334
Senator Shelby 1337
Senator Kerry 1342
Senator Murkowski 1346
Senator Bryan 1353
Senator Frist 1356
Senator Moseley-Braun 1361
Senator Bennett 1363
Senator Simon 1373
Senator Faircloth 1376
Senator Hatch 1434

WITNESSES

Bernard W. Nussbaum, former Counsel to the President of the United States . 1326
David Margolis, Associate Deputy Attorney General, U.S. Department of Justice 1400

APPENDIX

Contradictions between Maggie Williams' testimony and other witnesses 1364
Letters requesting documents from:
Jane C. Sherburne, Special Counsel to the President, June 30, 1995 1397
Susan Thomases, Esquire, July 11, 1995 1398
Miscellaneous handwritten notes 1453
Written note found in Vincent Foster's briefcase on July 26, 1993, Document F 004319 1462
Interview: Bernard Nussbaum on July 21, 1993 1463
Document Z 000346 1464
Document Z 000514 1465
Document FBI 0000061 1466
Office of Vincent Foster 1467
Document Z 001123 1468
Document Z 000598 1469

Page

WEDNESDAY, OCTOBER 25, 1995

Opening comments of Chairman D'Amato 1471
Opening statements, comments, or prepared statements of:
Senator Moseley-Braun 1482
Senator Mack 1482
Senator Sarbanes 1482
Senator Shelby 1483
Senator Kerry 1483
Senator Murkowski 1484
Senator Faircloth 1485
Senator Simon 1485
Senator Dodd 1486
Senator Boxer 1491
Senator Bennett 1493

APPENDIX

Document Z 001231 1515
Carolyn Huber testimony at August 3, 1995 hearing 1516
Summary timeline charts 1517

THURSDAY, OCTOBER 26, 1995

Opening comments of Chairman D'Amato 1521
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1522
Senator Kerry 1524
Senator Dodd 1526

THURSDAY, NOVEMBER 2, 1995

Opening comments of Chairman D'Amato 1531
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1532
Senator Mack 1532
Senator Simon 1542
Senator Bennett 1551
Senator Moseley-Braun 1554
Senator Dodd 1557
Senator Faircloth 1559
Senator Kerry 1571

WITNESSES

Margaret A. Williams, Assistant to the President and Chief of Staff to the First Lady 1533
Susan P. Thomases, Attorney at Law, Willkie Farr & Gallagher, New York 1544

APPENDIX

Early morning phone calls, July 22, 1993 1583
Deposition of Margaret A. Williams, pages 48 to 53 1584
Deposition of Margaret A. Williams, pages 54 to 58 1585
Entry/Exits for July 22, 1993–July 28, 1993 1586
Visitor summary 1587

Page
Itemized phone calls 1588

FRIDAY, DECEMBER 8, 1995

Opening comments of Chairman D'Amato 1589
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1593
Senator Simon 1596
Senator Shelby 1599
Senator Dodd 1599
Senator Hatch 1601
Senator Faircloth 1607
Senator Murkowski 1608

WITNESS

Jane C. Sherburne, Special Counsel to the President 1611

APPENDIX

Fax and letter from Willkie Farr & Gallagher to Special Committee regarding telephone records of Susan Thomases, December 6, 1995 1614
Document ST 0000117–ST 0000119 1618
Fax of Susan Thomases' Cellular One telephone record 1621
Letter in response to Chairman D'Amato's letter of December 5, 1995, from Jane C. Sherburne, Special Counsel to the President, December 7, 1995 1622
Wall Street Journal article, December 8, 1995, "Subpoena Time" Review & Outlook 1623

MONDAY, DECEMBER 11, 1995

Opening comments of Chairman D'Amato 1625
Opening statements, comments, or prepared statements of:
Senator Faircloth 1641
Senator Dodd 1645
Senator Simon 1647
Senator Sarbanes 1649
Senator Mack 1654
Senator Bennett 1663
Senator Grams 1668

WITNESSES

Margaret A. Williams, Assistant to the President and Chief of Staff to the First Lady 1626
Robert Barnett, Partner, Williams & Connolly, Washington, DC 1628
Ingram Barlow, Comptroller, Williams & Connolly, Washington, DC 1635
Diane Blair, Professor, University of Arkansas 1640

APPENDIX

Letter dated November 22, 1993 to Jerry C. Jones, Esquire, Rose Law Firm, from David E. Kendall 1679
Deposition of Margaret A. Williams, July 7, 1995:
Pages 94 to 99 1680
Pages 139 to 144 1681
Pages 144 to 149 1682

Page

WEDNESDAY, DECEMBER 13, 1995

Opening statement of Chairman D'Amato 1683
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1685
Senator Shelby 1686
Senator Boxer 1687
Senator Bennett 1688
Senator Simon 1690
Senator Murkowski 1691
Senator Dodd 1692
Senator Grams 1694
Senator Faircloth 1695
Senator Moseley-Braun 1695

WITNESSES

Sylvia M. Mathews, Chief of Staff, U.S. Department of the Treasury 1695
C. William Burton, former Policy and Staff Director for the Chief of Staff to the President 1697

APPENDIX

Letter requesting documents from Jane C. Sherburne, Special Counsel to the President, November 27, 1995 1726
Document S 011579 1728
Document S 011580 1729
Letter in response to Chairman D'Amato's letter of December 5, 1995, from Jane C. Sherburne, Special Counsel to the President, December 7, 1995 1730

MONDAY, DECEMBER 18, 1995

Opening comments of Chairman D'Amato 1731
Opening statements, comments, or prepared statements of:
Senator Sarbanes 1733
Senator Dodd 1754
Senator Bennett 1756

WITNESS

Susan P. Thomases, Attorney at Law, Willkie Farr & Gallagher, NY 1731

APPENDIX

Document ST 0000123 1772
Review of documents in Vincent Foster's Office 1773
Exhibit page 2 1775
Document ST 0000125 1776
Cellular One phone records 1777
AGC Treasury Dept 1778
Document ST 0000032 1779
Document ST 0000039 1780
Document ST 0000 [Redacted] 1781
Faxed letter from Willkie Farr & Gallagher 1782
The Wall Street Journal, December 18, 1995, "Whitewater Report for RTC Discloses No Basis for Agency to Sue Clintons" 1785
The Washington Times, December 18, 1995, "Whitewater Panel To Grill Thomases" 1787
Pillsbury Madison & Sutro Report, Preliminary Report to the RTC, April 24, 1995 1789
Pillsbury Madison & Sutro Supplemental Report to the RTC, December 13, 1995 1938

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

VOLUME I

TUESDAY, JULY 18, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. If the Committee will come to order. First, let me say that this has not been an easy process, but it is one that has been made much easier due to the cooperative efforts and manner in which my colleague, the Ranking Member, Senator Sarbanes, has worked with us, and we have worked in a cooperative effort to bring us to this point in terms of laying out the methodology and the scope of the hearings and the manner in which we would proceed. I would hope that we can continue in this manner. I have every confidence that we can discharge our duties in the manner that brings credit to the Senate and represents the best interests of all of our citizens.

We have agreed that each side will make opening statements for a half hour, then it will revert to 10 minutes to one side, 10 minutes to the other. We anticipate that each side will take up to an hour and a half before we get to our first witness.

Today the Senate Whitewater Committee begins its first round of public hearings. The Senate has authorized the Committee to ascertain the full facts about Whitewater and its many related matters. We intend to conduct fair, impartial and thorough hearings. That's what the American people want, expect and deserve.

Three years ago, the American people first learned of Whitewater, the Arkansas real estate development in which Governor Bill Clinton and Mrs. Clinton owned a 50 percent interest with Mr. James McDougal, the owner of the other 50 percent of Whitewater. Mr. McDougal was also the owner of Madison Guaranty, the Arkansas savings and loan that's at the heart of Whitewater. The whole story of Whitewater is very complicated. This matter

stretches from the early 1980's when the Clintons and the McDougals embarked on their real estate venture to the financing of the 1990 Clinton gubernatorial campaign and on to Washington in the first 2 years of the Clinton Presidency.

In authorizing the Committee's investigation by a 96 to 3 vote, the Senate has made clear that Whitewater is not a partisan issue. The entire Whitewater matter raises very serious questions that the American people want answered. The Independent Whitewater Counsel, Judge Starr, has obtained a number of guilty pleas from a number of close Clinton associates.

During last summer's Whitewater hearings, the Banking Committee uncovered many previously unknown facts. We learned that certain top Clinton Administration officials were not candid and forthcoming to Congress about Whitewater. That's troubling. We also discovered that senior Treasury Department and White House officials mishandled confidential law enforcement information relating to Madison and Whitewater. That's even more troubling.

With each passing month, more and more questions are being raised about Whitewater. This past Sunday The New York Times asked two central questions concerning Whitewater. First, did the Clintons pay their share of the venture's losses? Second, did Mr. Clinton, as Governor of Arkansas, help his business partner Mr. McDougal get any favors from State officials? Based on its review of newly released documents, The New York Times reported that McDougal "shielded the Clintons to an extent far greater than previously reported from paying their fair share of Whitewater losses." Question: Is The New York Times right? The American people have a right to know.

The Senate has authorized the Special Committee to investigate a number of areas in this round of hearings. We will examine whether White House officials interfered with the Park Police investigation in the office of Vincent Foster. The death of the number two lawyer in the Clinton White House on July 20, 1993 shocked and bewildered the nation. This marked the first time since the death of Secretary of Defense James Forrestal in 1949 that such a high-ranking U.S. official took his own life.

Later this Committee will examine other areas of Whitewater. For example, we will look at whether Members of the Clinton Administration tried to obstruct criminal referrals involving Madison and Whitewater.

Moving to matters in Arkansas, we will examine whether James McDougal improperly diverted Madison funds to Whitewater or to Governor Clinton's campaign. We will also examine Judge Hale's charges that Governor Clinton asked him to make an improper loan to Mrs. McDougal to prop up Whitewater. The American people have a right to know the truth about these matters.

As we turn to the subject of these hearings, the handling of the papers in Mr. Foster's office, I will briefly outline some of the relevant facts developed by the Committee's highly professional staff. These facts fall into two categories: Facts that are known and undisputed, and facts that are subject to sharp and vigorous dispute.

Let me begin with some facts that are known and undisputed. Vincent Foster was born in Hope, Arkansas in 1945. He was in the same kindergarten class as President Clinton and former White

House Chief of Staff Mack McLarty. Vincent Foster was first in his class at the University of Arkansas Law School. He received the highest score on the Arkansas Bar the year that he took that examination. In 1971 Vincent Foster joined the Rose Law Firm in Little Rock. He became a partner in 1973, just 2 years later.

From what we know, Vincent Foster was well liked and well respected. Evidently, he placed high value on his professional reputation. His coworkers have described him as careful and precise. At the Rose Law Firm, Vincent Foster formed friendships and professional relationships that profoundly affected his career and future. His partners included Webster Hubbell and Hillary Rodham Clinton. He was a close personal friend of both the President and Mrs. Clinton.

After Bill Clinton was elected President, one of the first things he did was to name Vincent Foster to the critical position of Deputy Counsel to the President. Vincent Foster came to Washington. At the White House, Vincent Foster joined a small group of lawyers who worked for the White House. He had an office in the West Wing, not far from the Oval Office.

Let's turn to how Whitewater fits into Vincent Foster's story. Although now is not the time to develop the full Whitewater picture, which will be the subject of future Senate hearings, we now know that Vincent Foster played an important role in advising the Clintons about Whitewater.

In March 1992, during the Presidential campaign, stories first appeared in the national press raising serious questions about the Clintons' investment in the Whitewater real estate development. The press reported that the Clintons owned 50 percent of Whitewater but that most of their financial losses were covered for by their partner Jim McDougal, who also ran the Madison Guaranty Savings & Loan.

The press raised questions about whether then Governor Clinton gave preferential treatment to McDougal's savings and loan. The Clinton campaign responded to these news stories. Vincent Foster, along with others whose testimony you will hear in the coming days, helped gather Whitewater-related documents. Mr. Foster helped to prepare the campaign's response to press inquiries. Another close friend of the Clintons who responded to the Whitewater reports for the campaign was New York lawyer Susan Thomases.

But Vincent Foster's involvement with Whitewater did not end with the campaign; it followed right into the White House. At the end of 1992, the Clintons decided to end their investment in Whitewater. Mr. Foster assisted the Clintons in selling their Whitewater investment to James McDougal.

Once Vincent Foster became Deputy White House Counsel, he devoted energy and effort to advising the President and the First Lady about how to deal with Whitewater transactions on their 1992 tax returns and mandatory public financial disclosure statements.

Mr. Foster spent a lot of time working on the personal financial matters of the Clintons. More was at stake in Whitewater than simple routine tax preparations. Mr. Foster was confronted with some of the difficult and tangled legal and factual questions that lay at the heart of Whitewater. As you will learn during these

hearings, at the time of his death, there were a large number of documents in Vince Foster's office relating to Whitewater and the Clintons' personal finances.

Between 5 and 6 p.m. on July 20, 1993, Vincent Foster was discovered in Fort Marcy Park in Virginia. After 8:30 p.m. that same night, White House officials first began to receive word of Vincent Foster's death.

As of 9:15 that night, the White House Counsel's Office was empty. In keeping with routine normal security procedures, the office's door was locked and the alarm was set. What happened in the office of Vincent Foster in the following hours and days will be the subject of these hearings.

Because of Vincent Foster's high office and important responsibility, the implications of his suicide reach beyond the personal and private tragedy of his family and friends. There was both a national interest and a law enforcement interest in examining why Vincent Foster took his life. The facts that I've just outlined are not in dispute, but many of the events that took place at the White House after Vincent Foster's death are in dispute—and sometimes these facts are in sharp conflict.

I will now briefly outline the three major areas the Committee will look at during this round of Whitewater hearings. First, what happened in Vincent Foster's office on the night of July 20, 1993. The Committee will hear conflicting testimony about whether the police asked the White House to safeguard Mr. Foster's office so that investigators could later examine its contents.

We do know, however, that Vincent Foster's office was unlocked and remained open between the hours of 10:45 and 11:45 on the night of his death. The White House undertook no special effort to secure Mr. Foster's office until the next morning.

The Committee staff has established that at least three people entered Vincent Foster's office at some time between 10:45 and 11:45 p.m. on July 20, 1993: Bernard Nussbaum, the Counsel to the President and Mr. Foster's senior colleague; Margaret Williams, Chief of Staff to the First Lady; and Patsy Thomasson, then Special Assistant to the President and a long time friend of the First Family from Arkansas. The Committee will want to ask why wasn't Mr. Foster's office sealed? Who entered the office and when? What were they looking for? Were they looking for the Whitewater documents? Was anything removed or destroyed? The Committee will have to resolve differing accounts by various White House officials concerning their movements in Mr. Foster's office on the night of his death.

The next major episode to which this round of hearings will turn occurred on Thursday, July 22, 2 days after Vincent Foster's death. That morning, top Justice Department prosecutors, FBI agents and Park Police arrived at the White House. These law enforcement officers expected to search and review the documents in Vince Foster's office. There is a dramatic contradiction among the witnesses about the events relating to that search. On the one hand, there is testimony of the White House officials; on the other hand, the testimony of career Justice Department prosecutors, FBI agents and police.

What we do know is that the Justice Department officials were not allowed by the White House to review the contents of Vincent Foster's office. Instead, Bernard Nussbaum, the President's top lawyer, insisted that the Justice Department officials, FBI agents and police sit by as he and his own staff examined the Foster papers.

After the law enforcement agents left the White House, Nussbaum and the First Lady's Chief of Staff, Margaret Williams, returned to Vincent Foster's office. They searched the office and selected files relating to Whitewater and the First Family's finances to be removed to the White House residence. These files remained there for 5 days before being sent to the First Family's personal attorney at Williams & Connolly.

The Committee will want to ask why did the prosecutors, including the Deputy Attorney General of the United States, the number two Justice Department official, believe that it was important that the career Justice Department attorneys review the files in Vincent Foster's office? Why did the White House reject their request? Why were the documents moved from Mr. Foster's office to the residence? Who made the decision about the White House? Who would handle the documents and the investigation?

Finally, the hearings will address the discovery by White House officials of a torn, undated page of writing by Vincent Foster that was eventually located in his briefcase in the White House office. White House witnesses have maintained that on Monday, July 26, an Associate White House Counsel accidentally found this torn-up note in the briefcase while packing the contents of Mr. Foster's office.

But, here again, there is a difference in testimony. There is evidence that at least two White House lawyers actually saw the torn paper in Vincent Foster's briefcase 4 days earlier on July 22 and that they kept this discovery to themselves.

The Committee will want to ask when did White House Counsel Nussbaum and his staff first learn of the existence of the torn-up note? Why was the note not discovered during the search that Mr. Nussbaum conducted on July 22 when he opened the briefcase and removed documents from within it? After the note was removed from the briefcase on July 26, why did the White House wait another 24 hours before notifying law enforcement officials? These questions and others will arise during the testimony and documentary evidence presented to the Committee during these hearings.

In the final analysis, the Members of the Committee will have to judge whether anyone improperly handled the Foster documents or interfered in the police's investigation during the days following Vincent Foster's death. These are very important questions. We owe it to the American people not to prejudge any facts. We must be fair, impartial and thorough. We must be committed to the pursuit of truth. That's the American way; that's what we intend to do. I'll now turn to Senator Mack.

OPENING STATEMENT OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman. The central question I intend to focus on for the next 3 weeks is going to be why the White House seemed so desperate to get into Foster's office and re-

trieve the Whitewater files and why they can't give us the full story now.

In December 1993, they told us that any records taken from Foster's office were made available to Park Police investigators for review. At the same time, they stated that no documents related to Whitewater were contained in the inventory of items found in Foster's office. Only last week White House officials allowed reporters to review the 71-page Whitewater Development file that officials removed from Foster's office after his death. A White House official said last Tuesday that the file was the only Whitewater material in Foster's office. That's this 71 pages. That was the only Whitewater material in Foster's office.

Later last week White House officials began leaking handwritten notes of Vince Foster. They claimed the reason they hadn't given them over sooner was because the notes referred to the Clintons' tax records rather than Whitewater. The White House claimed reporters misunderstood if they thought the White House was showing them every document related to Whitewater that Foster had in his office when they handed over the first 71 pages.

They're still only giving us half the story. Let me show you what a partial stack of the real Whitewater file looks like. This is a partial stack. Just a few days ago we were told that this was the entire Whitewater file. These papers were provided to the Committee by David Kendall, the President's personal lawyer, and they only represented a portion of what the White House gave him. He and the White House maintained that we are not entitled to all the files removed; some are privileged. Senator Hatch will get into that issue later.

What I intend to explore is the fact that this is much more than just an innocuous set of documents as claimed by the White House. This pile of documents raises some serious questions about why Whitewater mattered so much back then and why it matters now. We have already established that Vince Foster was intimately involved in the Clintons' personal finances and that other White House officials were well aware of this involvement.

Those same officials were very concerned that a Federal investigation into Foster's death might uncover the evidence we now possess. That evidence is Vince Foster's handwritten notes detailing his own concerns about a number of things. First, the difficulty of filing truthful tax returns for the President and the First Lady; second, Foster's fear of an audit of the First Couple's tax returns; and third, the First Lady's possible involvement in covering losses at Madison Guaranty.

White House officials worried that someone at the Department of Justice or the FBI might find Foster's own notes which establish that Vince Foster worried about the connection between the Clintons, Madison Guaranty and Whitewater Development Corporation. If this evidence was discovered, they worried it would trigger a Federal investigation.

Sitting here today, I must say there was ample reason to worry. The Clintons have always claimed they suffered a loss on their Whitewater investment, that they were 50/50 partners with McDougal on the venture and that they bore substantial financial risk from the investment. Based on Vince Foster's own words, we

now have good reason to question these claims. The Clintons have maintained publicly that, although they sustained a significant loss on the venture, they reported a $1,000 gain from the investment so as to be absolutely ethical and above board in filing their 1992 tax returns. It wasn't ethics. It was their fear of an audit.

Mr. Foster's own notes, which are part of the enormous stack of Whitewater documents that the White House has hidden until now, established that Mr. Foster knew the Clintons were caught in a trap. The Clintons' public statements that they had suffered a loss on Whitewater were at odds with everything he or any of the accountants knew about the venture. In 1993, in the months before he died, Mr. Foster had the impossible job of proving a tax loss for the Clintons without supporting documents while at the same time avoiding an IRS audit.

No matter how good a lawyer Vincent Foster was, he couldn't prove something that wasn't true. The only thing he could rely upon was the figure of $1,000, which was the sum that McDougal paid the Clintons for their share of Whitewater in December 1992. Ultimately, Mr. Foster chose to claim a $1,000 gain so as to avoid an audit.

What I'd like to do now is to take a look at a few documents. The documents I'm about to show you were taken from the Whitewater files in Vincent Foster's office. Again, these are only three pages out of at least 450 that were only recently produced for our review. I might suggest to you that the documents are going to show up on the television screen. The handwriting that you will see on these documents is that of Mr. Foster. If you would put up document number 234 and focus in on "sometimes relied on Clintons' return on evidence. Don't want to go back into that box." Here Foster is distressed over the options for reporting either a loss or a gain on the Clintons' Whitewater investment. We see his concern about the fact that the accountants sometimes relied on the Clintons' returns as evidence, and, as he put it, they "don't want to go back into that box." As a matter of public record, we also know that the Clintons have always claimed that Madison Guaranty and Whitewater Development were separate. If you could focus in on "was McDougal trying to circumvent bank losses, why HRC is getting loans from others."

As we look further down on that page, which you have just focused on, this can only mean that Foster was raising the extremely serious questions we are still trying to answer. Again, his notes raise the following question: "Was McDougal trying to circumvent bank loss? Why HRC is getting loans from others." The questions that I think he was raising—were federally-insured S&L bank funds used to cover Whitewater losses and was Hillary Rodham Clinton borrowing money to help McDougal circumvent Madison losses?

Now, if you would put up document number 236 and focus in on "more importantly would result in an audit of proof of basis," and "can of worms you shouldn't open." Here Mr. Foster was trying to figure out how to avoid an IRS audit of the First Couple's tax returns. On this page of notes, he seems to finally determine that, when all is said and done, the options they have that coincide with their public statements "more importantly would result in an audit

of proof of basis." Which, he says, is a "can of worms you shouldn't open."

In essence, he seems to be saying that the option that supports the public statements is something he can't pursue. The third document is number 237. I believe you have focused in on "$1,000 basis so no tax effect, but arbitrary and still risk audit." I believe as well "0 basis with $1,000 gain. Avoid any audit of issue."

Here, again, Mr. Foster appears to be going over his options and how he can possibly keep the IRS from auditing the Clintons. He thinks about claiming "$1,000 basis so no tax effect, but arbitrary and still risks audit." He appears to then compare the scenario to the possibility of "0 basis with $1,000 gain," which would "avoid any audit of issue." Despite the fact that he recognizes it is arbitrary, this is ultimately the option Foster chooses.

What all these documents tell me is the White House certainly had reason to worry about a Department of Justice search of Vince Foster's office. The documents tell me that, contrary to the assertions the White House has made for many months and as recently as this past weekend, this is not a harmless issue about tax returns. Rather, it's about the finances of Whitewater Development and the fact that Vince Foster couldn't square the First Couple's public statements with reality.

Imagining the nervousness of the White House suspecting that these documents and others existed and that they were easily discoverable during the suicide investigation, a great deal of odd behavior is explained.

Thank you, Mr. Chairman.

The CHAIRMAN. We have some time remaining, but we're going to turn. As I said, each side will take approximately a half hour, then we'll go to 10-minute segments as necessary.

Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman. I take it after the half hour on this side, we'll go back to that side for 10 minutes and then back to this side for 10 minutes?

The CHAIRMAN. Correct.

OPENING STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, first of all, I subscribe to the necessity of conducting fair, impartial and thorough hearings. I think it's important that the facts be laid out in a civil manner, that this not become a partisan exercise. The Senate approved resolutions authorizing an examination of the handling of the documents in Foster's office, both last year and again this year.

In June 1994, the Senate passed Resolution 229 authorizing the first phase of this investigation, and that resolution provided that the Committee should conduct hearings into whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster at the time of his death.

Now, those hearings were not held last year in response to a letter from the Independent Counsel, then Mr. Fiske, who said that there were questions unanswered at this point with respect to the handling of the documents that they were trying to resolve before they could complete the investigation. They therefore asked if the

Committee last summer wanted to do public hearings on this particular subject, and the Committee acceded to that request.

This year, when we passed the resolution S. Res. 120, which is the resolution governing the activities of this Committee and which provides in section 4 that:

> Consistent with the rights of persons subject to investigation and inquiry, the Special Committee shall make every effort to fulfill the right of the public and Congress to know the essential facts and implications of the activities of officials of the United States Government and other persons and entities with respect to the matters under investigation and study, as described in section 1.

The matters outlined for investigation and study in that resolution included in section 1 are, and I quote:

> To conduct an investigation and public hearing into and study of whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death.

That resolution goes on to specify some other matters which will be looked into, but the Committee is not at this point examining those other matters. Those are to be done later this year in the fall, and today's focus is on the proper handling of the documents in Foster's office. That's the charge we're dealing with here today and in the days to come. Actually, in the many days to come since we have hearings now scheduled for the next 3 and perhaps the next 4 weeks, which I take it would complete this part of our examination of the matters that we've been charged with with respect to the documents.

As I understand it, it's our intention to complete this part of the inquiry during this period of time prior to the August recess. The resolution we're operating under authorizes the Committee to expend $950,000, almost $1 million, between now and the end of next February, and it calls on the Committee to "make every reasonable effort to complete, not later than February 1, 1996, the investigation, study, and hearings that are authorized" in this hearing. So that's the framework in which we are operating.

In other words, we've been given by the Senate almost $1 million for this inquiry. We've been given a time frame within which we are working. The money is until the end of next February, and we've been charged:

> The Special Committee shall make every reasonable effort to complete, not later than February 1, 1996, the investigation, study, and hearings authorized by section 1.

Section 1 includes the matters that are within the scope of our inquiry, the first of which, as I indicated, relates to the handling of the papers in Vincent Foster's office. Mr. Starr, now the Independent Counsel, has indicated to us that his inquiry would not be impeded by our proceeding to examine the way in which the documents were handled. He first sent us a letter on April 22 with respect to looking at documents and a further letter on January 6 with respect to interviewing and deposing witnesses, whereas Mr. Fiske, last summer, said I don't want you to proceed to look at that matter because we're still conducting an inquiry. Mr. Starr, in effect, indicated to us that his work was such that their inquiry would not be affected or impeded by the Committee moving forward, as we are doing today, in order to examine the Foster papers.

Now, having said this, by way of setting the framework in which we find ourselves, there are a number of matters listed in the resolution for examination by the Committee. Those matters were carefully worked out in extended consultations with the Chairman. Actually, these are the so-called scope questions and one can let their imagination run wild, as some have done. There are all kinds of rumors swirling around. There were candidates to be listed for inquiry that I think were clearly beyond the horizon and were not included. We tried to determine the matters that were relevant and appropriate for this inquiry and that's been spelled out in this resolution, and that, in a sense, guides us in our inquiry over the coming weeks and months.

This is but the first step. I quoted the particular relevant section, and then there are other sections that deal with various matters which this Committee will look into on behalf of the Senate on the basis of the charge that has been given to us by the Senate. Again, we've been given significant resources and counsel has been taken on on both sides. I'm encouraged by the degree of cooperation that I perceive has taken place between counsel on both sides in an effort to move forward, as the Chairman said, with a fair inquiry, an impartial inquiry and a thorough inquiry.

Let me just make a couple of comments about the hearings that are now before us. We have an extended set of hearings next week, the following week, and possibly into the week after that with the objective of completing the examination of the Foster papers issue before the August break, as I understand it.

I think it's important to bear a few things in mind as we hear the witnesses that are going to come before us over the next few days. First, I think it's important to withhold judgment until all information is received. We need to get the facts out to the public. We need to weigh the facts carefully. We need to hear the testimony carefully. I think people will obviously have differing recollections about events. There will be conflicting testimony. I don't find that unusual or extraordinary, given that we're talking about events that happened more than a couple of years ago. In some respects, it would be extraordinary if everyone had exactly the same story. So, in a sense, we will have to sort out these differing views of what took place and what the implications are of those differences.

Second, we have to clearly recognize that many allegations have been made, but allegations are not facts, and allegations need to be subject to a fair, tough-minded evaluation. Our job, I think, here, is to find the truth, to determine what the facts are, and, in the course of these hearings, to lay that out to the public so judgments can be made about what took place.

Third, I think it's very important to bear in mind, as we look at people's conduct in the aftermath of Vince Foster's suicide, and to realize that this was an extraordinary, traumatic situation in which people found themselves. For the Foster family and friends and his colleagues and associates in the White House, this was an extraordinarily stressful time.

Psychiatrists will tell you that one of the most traumatic experiences, one of the most stressful experiences, people can go through is a suicide of someone to whom they felt close, and it's very clear

from some of the depositions we've already received that this had an enormous emotional impact upon people. Grown men and women broke down emotionally. Foster was extremely popular with his working colleagues, and so I simply lay that out because I think it's important, as one looks at how people behaved, to understand the emotional shock that they had experienced. I mean, that comes through at different places that we'll be looking at, just how people were reacting in a very emotional way from what had transpired.

Many of the questions that have been raised, I think, are obviously subject to differing interpretations, and that's one of the things this Committee will have to carefully examine in the days to come. It's also important to recognize that as Deputy White House Counsel, Vince Foster dealt with a range of matters.

In effect, there are important privileges with respect to those papers: executive privilege and attorney-client privilege. For instance, we know there was a file dealing with Supreme Court nominees. That's a file over which the executive clearly can assert privilege. Also, attorney-client privilege, since Foster was using some of the personal papers of the Clintons in order to prepare some of their official statements as the Chairman indicated at the beginning, can be asserted. For example, there were mandatory financial disclosure statements that were required. So, as we look at the handling of these documents, I think we need to keep that dimension also in mind.

Now, it's my expectation that the Committee will be able to work through the witnesses in the days to come in a very careful and appropriate manner, so as to place ourselves in a position to evaluate the testimony. As I said, the Independent Counsel has indicated that his inquiry has passed beyond this issue and, therefore, we were given the green light; not that we are necessarily bound by that, but it's an important consideration. We've been trying to harmonize our activities with those of the Independent Counsel.

Finally, let me just say in closing that these hearings have a tremendous potential to become highly emotional. I've already outlined the fact that much of the conduct we've been examining occurred in the aftermath of the suicide, in the nature of that stressful incident. I think it's very important for the Members of this Committee to try to maintain this inquiry in a civil, rational way.

We're here to try to find out what the facts are, to hear the witnesses out, to try to resolve differing recollections and differing interpretations and then to evaluate that. But I think it's extremely important, both for us and for the public, to hear the testimony in full before we undertake the evaluation. I was always taught that's how you're supposed to do it, and I'm hopeful that's what this Committee will do as we now set upon the task of carrying through the fair, impartial and thorough hearings with which we have been charged by the Senate.

Thank you, Mr. Chairman.

Senator Dodd.

OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Senator Sarbanes. Is there about 10 minutes left?

The CHAIRMAN. I think it's about 10 minutes. If the Senator needs additional time——

Senator DODD. I thank the Chairman. Mr. Chairman, let me just begin by saluting you and Senator Sarbanes for the very fair and balanced way that I think you've gone about setting up these hearings.

The matters before us, as you have pointed out and Senator Sarbanes has suggested, are far too important, I think, to be turned into a political football, and I think it is to your credit that this has not yet happened. Mr. Chairman, I hope we will conduct these hearings, as Senator Sarbanes has just said, in the same spirit of fairness that has characterized their planning.

We on this Committee should remember what we're not. We're not the FBI. We're not the Grand Jury or a Grand Jury. We're not prosecutors, nor are we defense attorneys. We're United States Senators carrying out the mandate of this institution and the mandate of a very, very specific resolution.

Our charge in this set of hearings is to answer a narrowly tailored question: Did anyone at the White House impede the police investigation of Vince Foster's tragic suicide? That is our mission.

Our charge during this phase is not to delve into the details of President Clinton's and Mrs. Clinton's land transactions or to audit their tax returns or to spin wild conspiracy theories. We're going to hear about what people did or did not do in the midst of their grief at a very, very emotional time. We may hear about sloppiness. We're probably going to hear about mistakes. We're going to hear a lot about gossip and speculation.

But let me emphasize there has never, never been any suggestion that the police wanted to review Whitewater or any substantive file in Vince Foster's office. They were investigating a tragic, tragic suicide. We're going to hear about discrepancies in testimony from witnesses doing their best, in my view, to recollect specific details in the midst of a highly charged emotional event from 2 years ago.

I hope, Mr. Chairman, that we'll do our best to keep everything we hear and learn during these hearings in that context. We cannot look at people's actions, in my view, in July 1993 in a vacuum, plot them out like steps in a chemical reaction or subject them to the cold microscope of rational analysis. I think we must examine these events for what they were, deeply human reactions to a deeply human tragedy.

Mr. Chairman, there are few human experiences more traumatic than experiencing the suicide of a family member, a close friend or colleague, and I hope that each and every one of us will try to put ourselves in the shoes of those who lived through that tragedy. In examining this aspect of our hearings, I think we should ask ourselves how would we have reacted if this would have happened to someone on one of our staffs or to one of our childhood friends.

In the minutes and, literally, minutes and hours and days after this terrible suicide of a very decent man, friends and colleagues understandably acted on instinct, in my view, more than careful thought or plotting. One of the most traumatic and perplexing of human tragedies, a suicide. You've just been informed that some-

one you're very close to, known all your life, has taken his life. How do you react? What are you thinking about?

The people involved here were emotionally, mentally and physically exhausted, in my view, and we cannot expect people in such situations to exercise the clearest possible judgment in every case.

The context, Mr. Chairman, is also important because of the nature of the office in question. We're not talking about a crime scene here; the tragic suicide occurred in Fort Marcy overlooking the Potomac River. The suicide of a lawyer does not mean that it is open season on that attorney's files. There are legitimate privacy and executive privilege issues involved, as Senator Sarbanes has pointed out.

Think about it, if you would, in terms of a doctor/patient relationship. If your family doctor took his own life, would you want the police rummaging through your personal medical records in your doctor's office? Obviously we have different standards when we're talking about the President of the United States, but I think we should all at least acknowledge the understandable instinct to protect the privacy of the material in Vince Foster's office.

To date, Mr. Chairman, as you and Senator Sarbanes in part have pointed out, we have spent at the Federal level more than $10 million in reviewing what is known as Whitewater. Independent Counsels, two offices, 18 prosecutors, dozens of FBI agents and IRS agents, this Committee's work, independent investigators, press inquiries. It has been voluminous.

We now have in our possession some 2,400 pages of White House documents, and we have reviewed 8,500 more. Twenty-eight present and former White House staff members have appeared voluntarily to provide testimony to Committee staff. Nearly all of these staffers have also been interviewed, some of them multiple times, by other investigators. This is all on top of last year's hearings, during which we heard from 30 witnesses, printed 2,600 pages of testimony and deposed 38 witnesses.

It is important, Mr. Chairman, I think, to remember that those hearings found absolutely, absolutely no illegal or unethical activity on the part of anyone at the White House. Throughout our investigation, Mr. Chairman, we've had the complete cooperation of the President.

Many of us, of course, can remember instances in times not that long ago when this Congress had to fight tooth and nail to secure a minimum level of cooperation from the Executive Branch. That has not happened in this case at all. Serious questions have been raised, and they have to be answered in a serious way. But we should get the job done and then move on, in my view, Mr. Chairman.

Mr. Chairman, let me mention to you briefly—and I'm sure my case is not substantially different than other Members of this Committee—I asked my office to go back and review in the past 6½ months how many inquiries from my constituents I had received about this matter. To date, we have been able to find a total of phone calls and letters in my office on this matter totaling four inquiries in 6½ months.

Having said that, I suspect I'll receive dozens of calls and letters here this morning, but I wanted to place it in context of terms of

public interest. Now, public interest ought not to be the criteria by which we decide whether or not to pursue a matter that is serious, but I do hope we can get this job done and move on to what I know all of my colleagues share are the far more vital, important issues of this Congress, and that is, of course, dealing with our deficit issues and the problems of Medicare and Medicaid and the like, all of which deserve our attention.

So, Mr. Chairman, I conclude where I began, and that is to commend you for how you set up and planned these hearings and to compliment my colleague from Maryland as well who has represented the Minority side on this issue and planned for our days ahead.

But, again, I would hope sincerely, as Senator Sarbanes has said, that we keep in mind the context in which this specific part of our hearings will be conducted, and that is the highly charged emotional tragedy of a human being, an individual who attended kindergarten with the President of the United States and people in the White House, who had known each other, literally, all their lives. As we look at human reactions and human actions in the context of the hours immediately following that event, it is important that that be kept in mind as we examine this issue.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Dodd.

We'll now turn to Senator Hatch.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman. The Senator has named me as a Member of this Special Committee for the express purpose of considering matters within the jurisdiction of the Judiciary Committee. Consistent with this mandate, I intend to focus my inquiry to matters related to the Department of Justice's involvement in Whitewater. I also hope to address some of the legal issues surrounding the withholding of information by the President.

I would like, first, to thank Chairman D'Amato for giving me this opportunity to attend this hearing. I look forward to working with him and Senator Sarbanes and other Members of the Banking Committee as we exercise our oversight responsibility with regard to this important matter. Before delving into the legal questions that are at the center of this hearing, let me extend my sympathies to the Foster family.

We are often tempted to forget in our role as an oversight body that at the center of this investigation is the tragic death of a man who sought to serve his country and his President. There's simply no question that Mr. Foster's death was a tragedy. His family and friends have suffered terribly, and my heart personally goes out to them.

We must remember, however, that Mr. Foster's suicide was the first of a high-ranking governmental official in the United States in almost 50 years. He was close to the President. As a Deputy White House Counsel, he was privy to the innermost workings of the White House. His death, therefore, was of great importance to our Nation. It cannot be classified as a routine suicide and, given the scope of the Whitewater investigation, demands congressional oversight.

Most troubling are the questions pertaining to whether the White House obstructed the Justice Department's investigation into Mr. Foster's death. It seems clear that certain White House officials entered Mr. Foster's office before law enforcement investigators could examine it and after Associate Attorney General Webster Hubbell and Chief of Staff Mack McLarty had ordered the office sealed for the Park Police investigation.

We need to ascertain whether the subsequent removal of documents in the search of the office was politically motivated, improper or illegal or, as some media accounts have suggested, simply the sign of panic and poor judgment.

It is in the best interest of the United States and the Clinton Presidency that these questions be answered. Despite President Clinton's initial promises to deal openly with Special Prosecutor Ken Starr and the Committee, there appears to have been some reluctance to turn over all of the documents related to the Whitewater investigation.

The President's personal lawyers have, for example, released a number of documents removed from Mr. Foster's office that are relevant to the Whitewater investigation. But this has been openness in word only, not in deed. The President, exercising executive or attorney-client privilege, has refused to divulge the contents of those documents and instead provided records comprised mostly of total redactions concealing, perhaps, important evidence.

For example, this first document appearing on the video screen, number 87, cryptically states in longhand "get out of Whitewater." But the rest of the information contained on the page has been deleted or redacted.

A second document, number 182 and 183, appears to be an official memorandum, but most of this information has been redacted. Interestingly, the document states that "unlike the $1,000 honorarium mentioned above, however, it seems worthwhile to omit Whitewater even if doing so raises a few questions."

Questions have been raised, and what we want are the answers. Yet another document, number 93, in the possession of the President's lawyers, has a handwritten reference to "Whitewater." But the remainder of the document has been left out or redacted.

Similarly, I might add a final document. Number 229 states "Whitewater," but it's followed by a whole section that is missing with an "options" agenda at the bottom of the document. There are many other documents with redactions that have been provided by President Clinton's lawyers and the White House. This is in the opinion of many hardly the kind of compliance that we hoped for and is certainly not the openness promised by the President.

The existence of these documents is troubling and raises several questions that we hope to answer during the course of these hearings. First, why did Mr. Foster, the Deputy White House Counsel, an employee of the United States, have a substantial number of documents relating to the President's allegedly private business affairs? I am interested and concerned that an official paid by the taxpayers would be working on private matters, particularly private matters that would set up a conflict between the White House Counsel's Office and the Department of Justice. If, in fact, Mr. Fos-

ter was working on Whitewater for the President, a clear conflict of interest may have been present.

Second, why would the President claim an executive privilege over documents transferred out of the White House to the President's private law firm? We know that at least six of the documents controlled by the President's private lawyers have been withheld because of the claim of executive privilege. Executive privilege, as the Supreme Court defined in the United States v. Nixon, is limited to Government documents controlled by the President.

In other words, the President can invoke the executive privilege to withhold State documents, such as those relating to military secrets or those involving internal deliberations of the Executive Branch, but not to conceal his own legal difficulties from a governmental investigation. Why, then, is a claim of executive privilege made for certain documents in the possession of the President's private lawyers?

If those documents are related to the Office of the President, then they should remain in control of the United States. The President cannot allow Presidential documents to be transferred into private hands, even those of his personal lawyer.

In the wake of another White House scandal, Watergate, Congress adopted a statute to prevent the President from disposing of documents or transferring documents from the control of the United States. The statute, known as the Presidential Records Act, requires that any documentary materials created by the President or his staff remain under the ownership and control of the United States.

We must ask whether the transfer of the documents to the President's Private Counsel violates the requirements that the documents remain in the custody and control of the United States. At least one court has plainly held that the Presidential Records Act "leaves no room for any governmental official to enter into agreements conferring ownership or control of Presidential records to any person or entity other than the United States." That's American Historical Association v. Peterson, and that was a 1995 case.

Third, the President, through his lawyers, refused to release several of the documents retained by the White House on the basis of attorney-client privilege. Why? Why should the President claim attorney-client privilege over State documents ostensibly worked on by Mr. Foster?

Perhaps an even more important consideration must also be raised. In light of the fact that the President released a number of the documents in his possession and in the possession of his private lawyers to the news media, has he not, in effect, waived any right to assert a privilege of any type?

The entire Whitewater investigation has been plagued by Presidential declarations that everything relevant to Whitewater had been released, only to be followed by the discovery of additional unreleased documents.

Finally, as documents trickled out of the White House, they have in large part been redacted. I question whether this is the type of openness the President promised the American people, and I look forward to ascertaining the answers to these troubling questions over the next few weeks.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, we have some more time, but let's keep it moving back and forth, so we'll yield to you.

OPENING STATEMENT OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you, Senator Sarbanes, Mr. Chairman. Almost a year ago today we began these hearings and, at that time, we examined the death of Vince Foster and determined in our wisdom, as each inquiry before us had, that his untimely and tragic death was indeed a suicide.

Now, after millions of dollars, thousands of hours of Special Prosecutor interrogation, and thousands of hours of FBI inquiries and hundreds of FBI agents, hundreds of news stories and investigations, we are about to examine a second phase of events, the handling of documents.

Clearly, the first round of hearings titillated and provided opportunity for the political joke and rumor mill. Conspiratorial lists were served up a full plate of fare for every paranoid theory imaginable to take flight, but the bottom line is—and the record shows—that no evidence came before this Committee to alter the sad conclusion regarding Vince Foster's death and none have yet surfaced, though still one inquiry continues.

I have no doubt that the next days will serve as more grist for the mill. There will be embarrassments, and there will be contradictions, contradictions of memory. There will certainly be additional speculation and considerable questioning of how some in high positions made some of the judgments or acted the way they did.

In the end, though, it is my hope that we, and much more importantly the American people, will fairly judge these actions and this record in the light of the very difficult human moment the witnesses found themselves in, which both Senator Sarbanes and Senator Dodd have described. I believe that this Committee acquitted itself well in the first round of hearings chaired by Senator Riegle.

Our fellow citizens don't want these hearings to be a partisan circus. They don't want us wasting money on a political witch hunt or creating theories out of whole cloth. They want a fair and politically neutral search for the truth, and all of us who are spending so much time rhetorically dealing with Government waste certainly don't want to spend taxpayers' dollars scoring points against each other. That's not what the hearing process is supposed to be about, it's not what the United States Senate is supposed to be about, and it's certainly not what the American people want. They want and they deserve the truth.

Mr. Chairman, I think the stage has been set for competent, probative hearings, and I'm confident that Members of the Committee will respect the scope and the intent of these hearings. But it truly remains to be seen from our statements and our actions how the American people will perceive the product of our labors, and whether or not these hearings will in the end justify the cost as much for revealing the truth as they will for achieving political objectives.

I know, Mr. Chairman, that the truth still outweighs politics in America, and I know the truth that is revealed in these hearings

will show the American people that we are not involved in a constitutional crisis. Nevertheless, there are legitimate questions about the conduct of those who are acting on their own in what they deem to be the interest of the President or those associated with the President, and that conduct must be examined and those questions must be answered.

Therefore, these hearings are really more about judgment than conspiracy. They are more about personality than criminality. They are more about perceptions than deceptions. Above all, they are more about our maintaining respect for the institutions of Government than someone else's disrespect for the Constitution.

As we proceed, Mr. Chairman, I would hope that we probe deeply into facts, not rumor, and find the truth, that we find the answers and lay them out in an uncharged atmosphere that avoids heated rhetoric, bizarre allegations and disrespectful characterizations that have more and more become the daily fodder of our political debate.

Our obligation is to seek the truth about the handling of documents at the White House, number one; about contacts regarding Madison later; and about alleged interference with the RTC and the general involvement and interaction of public and private individuals on this matter.

But, Mr. Chairman, I hope we do not take the resolution that established the scope of these hearings to be a license to disrespect the rights of those who come before us, to witch hunt or to grandstand or to misinterpret bad judgment as something illegal or conspiratorial. We, as representatives of the American people, have a solemn responsibility to complete our task without reaching too far or spending too much or hurting innocent people simply to satisfy a political agenda or philosophy. We should ask tough questions, and we will and we have before; and we will determine who did what and when they did it and why. We should do it quickly and thoroughly and, most importantly, in conjunction with the Special Counsel.

I know that you, Mr. Chairman, and the Senior Senator from Maryland are committed to coordinating this Committee's activities with Judge Starr. I know that the Chairman himself has stated we are not going to do some multimillion dollar thing, we don't want to make the hearing so expansive that it becomes unfocused and we're not going to run roughshod over Judge Starr's work. I know the Chairman means what he says.

My understanding, Mr. Chairman, is that we will have the full cooperation of the Administration. The documents which Senator Hatch just showed us, notwithstanding their redactions, were provided by the Administration. Clearly, if they wanted to hide something completely and not titillate you with the mere leaving of a word, the document might better have never appeared. But it did appear, and the fact of its appearance is a statement about that cooperation. I am convinced that we therefore can, fairly and impartially, ultimately evaluate the facts here and once and for all put this issue to rest.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Faircloth.

OPENING STATEMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman. The term "Whitewater" has come to describe not only the failed Arkansas land development of the President and Mrs. Clinton, it has also come to describe a web of interconnected scandals involving personal and political friends of both the President and the First Lady.

Today, the Banking Committee resumes hearings on the Whitewater scandal with a focus on the events that transpired shortly after the death of Vince Foster. It's important that we note that the death of Mr. Foster marked the first time that one of the highest-ranking White House officials committed suicide while serving in their official capacity. By its very nature, suicide is always a tragedy, but the death of Vince Foster is especially so, given his very close and long-time friendship with the President and Mrs. Clinton and the sensitive nature of the work he performed for them as a White House Counsel.

In his report on Mr. Foster's death, Special Counsel Robert Fiske determined, and I quote—and if you've ever heard convoluted words I quote "what we can conclude is that there is no evidence that he"—Mr. Foster—"did have a concern against a background in Whitewater/Madison issues were neither a matter of expressed concern in the White House nor the subject of media attention."

Now, when you filter that, what Robert Fiske said was that there was no evidence the White House scandal had anything to do with Mr. Foster's state of mind prior to his death. From the prior Whitewater hearings, we know that is false and not true.

In the course of these hearings, I think it will become obvious not only was Mr. Foster concerned about Whitewater, but so were several other White House officials, including White House Counsel Bernard Nussbaum and Hillary Clinton's Chief of Staff and long-time friend Maggie Williams. Both have admitted to removing Whitewater documents from Mr. Foster's office after his death.

In fact, a Secret Service agent will testify he personally watched Maggie Williams take documents from Vince Foster's office the night of his death. Ms. Williams has denied that she took any documents that night and claims to have passed a lie detector test, but we have not been given a copy of the test or the results of the test, nor do we know how many tests she took, and these are crucial in determining the accuracy of the test or tests. Mr. Chairman, this Committee should demand to get a copy of that test and the results of all questions asked, and should know if there were more than one test. Today, I call on the White House to release the test or tests, however many there were, and all information relating to them to this Committee.

Why were so many people concerned about the failed Whitewater land deal of President and Mrs. Clinton? The facts show that the reason for such great concern is that the Clintons claim to be equal, 50/50 partners with Jim McDougal in Whitewater.

In reality, Jim McDougal used a federally-insured savings and loan to bail out the Clintons, and that savings and loan went broke, costing the taxpayers of this country, costing over $50 million. It fell upon Deputy White House Counsel Vince Foster to help determine whether or not the Clintons should declare a loss on their tax return for the Whitewater fiasco.

In a handwritten note found in his files, Mr. Foster expressed great concern about reporting the loss on the Clintons' 1992 tax return. Because being required to document them in an audit would be—and I quote, and we've heard earlier, but—"a can of worms you shouldn't open." I think that's something we need to focus on, "a can of worms you shouldn't open." The can of worms has been opened, mainly as a result of Mr. Foster's death and in no thanks to the White House, which has consistently impeded this investigation.

Mr. Chairman, I have no doubt that Vince Foster was a man of the highest ethical integrity. In fact, in a commencement speech at his alma mater shortly before his death, Vince Foster said—and I quote—"the reputation you develop for intellectual and ethical integrity will be your greatest asset or your worst enemy." Unfortunately, for this White House, their reputation for ethical integrity has become their worst enemy.

Mr. Chairman, I want to dispel the notion that we keep hearing of White House cooperation. Anything we have gotten from the White House has been comparable to eating ice cream with a knitting needle. We pick out a little, and they let a little and hold a little. The White House has said they want to cooperate fully with our investigation, yet they require a 24-hour armed guard stand watch over the documents they submit to this Committee.

Now, this is far better than they were able to do on the night of Vince Foster's death. Everyone who sees the documents has to sign a confidential agreement, yet the White House has leaked excessively to reporters to get their story out.

Finally, what they do submit is censored and, the word of the day, redacted. Take, for example, Vince Foster's phone logs. The Committee asked for 2 weeks of phone logs. What we got was four pages of censored material with a total of seven phone calls in 2 weeks. If this is cooperation, I call it obstruction. I would like to just show you the phone calls, in 2 weeks the phone calls the White House says Vince Foster made. This is 2 weeks, seven calls they'll give us.

[Pause.]

Mr. Chairman, if that's cooperation, I would like to see if they failed to cooperate what they might do.

I thank you.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I do think we ought to, in response to the question Senator Faircloth put to you, indicate to him that you and I joined together in sending a letter to the Special Counsel requesting information and the results of the polygraph test to which he made reference. That was a test not administered, as we understand it, by the White House. It was administered by the Special Counsel, and we jointly sent a letter requesting that material.

Senator FAIRCLOTH. Did you say you had requested?

The CHAIRMAN. Yes. We have requested of the Special Counsel the results and the questions of the polygraph test. So we have requested that.

Senator FAIRCLOTH. But we haven't gotten them.

The CHAIRMAN. No, we have not.

Senator SARBANES. There were press reports that she had voluntarily taken this test and passed it with the Special Counsel and, therefore, Senator D'Amato and I, in light of that, sent a letter to the Special Counsel requesting the results of that.

Senator FAIRCLOTH. You did request it, but we have not received it.

The CHAIRMAN. We have not received it, and we will take the liberty of saying——

Senator FAIRCLOTH. How many tests, Mr. Chairman, how many tests did she take?

The CHAIRMAN. We don't know. It appears there were two tests, but we have not confirmed that. We don't know exactly if the Special Counsel administered both, but we have requested them, and we will renew that request.

Senator FAIRCLOTH. Thank you.

Senator SARBANES. Good.

Senator KERRY. The record also better reflect the Senator's opening suggested it was an alleged test or an alleged passing, and I think the record is also clear as to the fact of the test, is it not?

The CHAIRMAN. We really want to ascertain, I believe—I think we've been given to believe there was one test administered by the Special Counsel. We are attempting to pursue that, ascertain exactly how many and if they will give us the results or the questions and answer that question. That is still an open question.

Senator SARBANES. Senator Bryan.

OPENING STATEMENT OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Mr. Chairman. Let me say at the outset I had urged unsuccessfully that Members not make opening statements so we could dispense with the rhetoric and hear directly from the witnesses, so my comments will be very brief. I'm committed to joining with my colleagues in a thorough investigation of the events surrounding the tragic suicide of White House Deputy Counsel Vincent Foster and subsequent Whitewater-related issues that will come before this Committee.

Last year, this Committee conducted itself in a responsible, bipartisan manner that reflected well on the Senate. Given the highly political nature of the subject material, it is extremely difficult to keep this from turning into a partisan squabble.

I, for one, am committed to an impartial investigation of the facts in public view. Public hearings are an integral part of the workings of Congress, and I fully support these public proceedings.

There are, however, a few parameters which should guide our deliberation during the Whitewater hearings. First, we should attempt to ascertain all of the facts in an impartial manner without prejudging the outcome. I think the colloquy that we've just engaged in, in terms of the request for the polygraph or lie detector results of Maggie Williams, is an example of that. It's my understanding, as the Chairman and the Ranking Member have indicated, that both have joined in a request for those results and to dispute any notion that there is a withholding on the part of the Administration or Ms. Williams. We've been informed orally, as I understand it, by Special Counsel that that information is not

going to be provided to us at this time. I think that's illustrative of the thing we should try to avoid in these proceedings. Let's hear the facts, get them all out on the table and then reach the conclusions as we will.

Second, a guiding principle is we ought not to jeopardize or compromise the investigation of the Independent Counsel, Mr. Starr. There will be a proper time and place for all the facts to come to light, and we should not do anything in the course of this hearing that would in any way compromise that investigation.

Let me conclude that the stage of the hearings we are in at this time is not only clearly defined, but quite narrow and specific. The Committee is charged with, according to the resolution, "whether improper conduct occurred by White House officials in the handling of documents in the office of White House Deputy Counsel Vincent Foster." That is the issue before us at this time.

Mr. Chairman, I would like to compliment you and the Ranking Member, Senator Sarbanes. I must say that I approach the hearings with an auspicious sense that we can conduct these hearings as you, as the Ranking Member, and our Chairman last year, Senator Riegle, did in developing the facts. Then we can reach the conclusions based upon the record that's developed, not upon some of the wild theories and gossip that have been spread around concerning this circumstance.

Finally, let me compliment the Administration for their cooperation in turning over documents and assisting the hearing. I look forward to hearing from our witnesses and getting on with our investigation, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bryan.

We'll turn to Senator Bond.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman. As we continue our effort to get the facts of the so-called Whitewater affair out on the table, some people ask me why are we continuing to do this. People want to know whether there is a smoking gun, are there 17 minutes of erased tape, are there plumbers, or was there money diverted to pay for foreign wars? That is not the point. But many people to date have thought that Whitewater is too many people and too many phrases like criminal referrals, redactions and recusals.

Today we are going to focus on, and in the following days we are going to focus on, the activities around a very tragic and very regrettable event, the suicide of Vincent Foster. This suicide triggered late-night searches, documents disappearing and a laundry list of conflicting stories as to who took what, when, and why. This clearly, as has been indicated, was an emotional and heart-wrenching time for the people involved—they have our sympathies, as does the family.

But over the next several weeks, this Committee is going to be faced with a choice of believing accounts of career law enforcement officials or the stories of White House officials and the propriety or the impropriety of activities that were undertaken. I think everyone should understand that what has been the current of Whitewater since the beginning is showing up here once again.

Contrary to what my good friends from Connecticut and Nevada have said about this being a case of complete cooperation and open and full disclosure by the White House, it has not been such. The initial stories of the Administration at nearly every step of the way, and in some instances in which I was directly involved before this very Committee, have proven to be incomplete, inaccurate or just plain untrue. It seems to be that only after pressure from Congress and the media—and I commend them for their efforts—does the truth slowly but surely trickle out. That is why we have to continue to have these hearings because we have not gotten the full story, and we still need to get that story.

Let me put this into context, for we're not talking about a few isolated instances of people misspeaking. The pattern of what I would have to call deception began during the 1992 campaign with the frantic efforts of the campaign staff to keep a lid on the story of the land dealings surrounding Whitewater Development. As we learned in our last hearings, it carried over to the White House and the Department of Treasury in their efforts to give the President and the First Lady heads-up and tip-offs about the contents of criminal referrals which were being worked on by independent agencies.

It then led to efforts to keep friends of the President either in charge of, in control of, or able to influence the ongoing investigations. Now, these hearings will begin to discuss how it led to White House staff frantically searching for the Whitewater files, finally removing the files and not telling us the truth about it, or not telling the public the truth about it. First, whether the files were taken out; second, who took them; third, where they were stored; fourth, what happened to them; and fifth, whether we even have a complete set of files today.

As we have already seen this morning, these files had nothing to do with national security; they had mostly to do with the Clintons' political security. That takes me back to what I said at the closing of the Whitewater hearings last year. We have heard many times about the need for an open Government, about the need to restore the faith of the American people in their Government and about the need to make the public service something that the so-called best and brightest would seek out.

Over the course of these hearings, we have seen many public servants, some career, some in their first job. As a rule, I think it is important to remember that many of them are very impressive people whose dedication to what they perceive as their job cannot be questioned. We also saw in a few instances a second phenomena at work, the blurring of lines between the public responsibility of their positions and their private commitment to protect the President and the First Lady, sometimes at all costs.

I believe that this is a tone set from the top: that the ends do justify the means, that somehow the public is best served if the President's interests are served, whether that be his private interest, his political interest or the interest of the Office of the Presidency. It is this ethical blurring, coupled with a set of standards that seems to imply if you are not indicted, you are fit to serve, that has gotten several Administration officials, both current and departed, in trouble.

This once again leads me back to the central question, Why? Why have sincere people cut corners, shaded the truth, evaded responsibility and occasionally, I believe, outright lied? What does the clear pattern of tip-offs and heads-up coupled now with late night searches, failure to secure Mr. Foster's office, interference in the Foster suicide investigation and the bizarre control of the so-called official search of Mr. Foster's office 2 days after his death mean?

We now know that on Tuesday, March 23, 1993, Roger Altman was made aware of the first criminal referral affecting the President. We also know that within hours of receiving that information, a background article which explained the links between Madison Guaranty, Whitewater and the Clintons was faxed to the White House. What we don't know yet is what did the White House do with this information and how the Department of Justice's work on those referrals was affected.

We now know that there was a fierce internal debate in the White House, led by Mr. Foster, over how to handle the Whitewater tax returns. In the hours and days after he died, his office was searched for these files. These files were removed, and law enforcement was not informed of their existence until months later.

We know that in May and June 1993, the Small Business Administration was working on putting together a criminal case against Arkansas Judge David Hale and Capital Management Services. A case which would find Mr. Hale accusing the President of pressuring him to make an illegal loan to Jim McDougal and which eventually led to Mr. Hale's conviction; and now, apparently, the indictment of the current Governor of Arkansas.

We also know that at the same time RTC employees in the Kansas City office were working on nine additional criminal charges against Madison Guaranty, again touching on the Clintons. We know that the Little Rock U.S. Attorney's office was working on the Hale case in July 1993, culminating in a search warrant being issued the same day, July 20, that Mr. Foster committed suicide.

Thus, the night that Foster died, the investigative wheels were in motion in three different Federal agencies, all pointing a finger at the political infrastructure of Arkansas. That is why many of us are not surprised that White House office staff searched his office the night of his death, failed to post anyone at the door to ensure that documents would not disappear, and then set up an elaborate system of screening documents which prevented law enforcement officials from getting access to relevant documents. We should remember that the actions of the night of July 20 and in the days that followed were only part of the larger picture, which continued well after Mr. Foster's tragic death.

We also now know that in late September 1993, information on the Kansas City office's second set of criminal referrals, nine new charges, was passed on to Mr. Altman and within days Jean Hanson, his top lawyer, was at the White House passing on that information. This set off a flurry of activity through the month of October, culminating in the bizarre coincidence that the chief investigator on the case, Gene Lewis, was removed from the investigation. White House staff had information on confidential criminal proceedings, and none of the witnesses who testified before us were

able to swear that no information got out. That is why criminal referrals are supposed to be kept confidential.

Unfortunately, it is important for the general public to believe in and trust their elected leaders in performing their jobs in an ethical, truthful and fair manner. We have some very real questions as to whether that occurred in that instance. It is for these reasons and this pattern that we must pursue this investigation, issue subpoenas, conduct investigations by deposition and hold these hearings to determine what was going on in the White House with regard to Whitewater. For our purposes, most importantly, we must determine if the extensive powers of the Presidency were misused.

I thank the Chair.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Senator Boxer.

OPENING STATEMENT OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much. First, I want to say to Senator Bond I agree with him that we need to practice open Government around here. I mean that across the board, whether it's looking at the Executive Branch or ourselves, and I'll remember your words. They're important words.

Mr. Chairman, we now enter year 2, phase 1 of the Senate Whitewater inquiry. What did we learn in year 1? We learned that people made mistakes. I suspect that is what we will learn in this phase.

Now, certainly enough people are looking at this. Why do I say that? Think of this. Many of the individuals who will testify in these hearings testified last year before Mr. Fiske, the Special Prosecutor, then before the House of Representatives, then before the Senate. Then they testified before Mr. Starr, and now they're before the Senate again. Next, they will testify before the House again, and then, perhaps, they'll testify before the Senate again when we enter phase 2 of year 2.

The Senate and the Office of Independent Counsel spent over $2 million on these inquiries last year. This year, we've budgeted almost $7 million between the two. Our report on the Whitewater investment prepared by an outside law firm for the RTC cost the taxpayers $3 million.

I want to make a point here, Mr. Chairman, to put this into context. Mr. Starr is using more than 50 Federal agents to assist in his inquiry. Fifty Federal agents. Senator Kerry cited more; I'll go with the conservative number of 50. The Unabomber has been on the loose for 20 years. For 20 years killing people, maiming people, but we have more than 50 Federal agents dispatched to Little Rock for Whitewater duty.

Duplication and expense. That's synonymous with these hearings so far. I hope we'll change that and move forward.

I want to say, Mr. Chairman, I've listened to you. I've listened to the Ranking Member, and it appears to me like it is your intention to move quickly, look at the facts and move on. I hope we can do that.

Today, we begin hearings to examine events following the death of Deputy White House Counsel Vincent Foster. I've read the sum-

maries of all the 50-plus depositions taken for this round. I would like to reiterate something I said in our first Whitewater hearing 1 year ago that happened to be replayed this morning on the radio.

The events that we are going to examine under a microscope were triggered by a personal tragedy, the suicide of a man who was a close friend, a colleague and a mentor to many of the people who will testify before this Committee.

Any errors in judgment committed by White House aides after Vince Foster's suicide were the errors of people operating under extreme stress. It doesn't change the fact that there may have been mistakes or errors, but we need to keep in mind they were operating under extreme stress. Every time we dredge all of this up, we hurt the family of Vince Foster: the wife, the children, the brothers, the sisters, the mothers, the fathers.

Added to the stressfulness and pain of the situation is the fact that neither White House Counsel nor the remainder of the White House staff had any procedures in place for dealing with the suicide of a Member of the Counsel's Office.

Nor were the Park Police better prepared. While the Park Police have loudly criticized the White House—and we will hear more of it, I'm sure, and it is their right to do that and their duty to do that if they think the White House was wrong—each Park Police officer has testified that he or she has never sealed an office that was not a crime scene. Vince Foster's office was not a crime scene.

So let's put it together. Extreme stress, one. Painful suicide, two. No procedures, three. Errors in judgment will surely follow. We are human, and we will see these errors in judgment in all their glory come before this Committee.

Mr. Chairman, if this is just about embarrassing the President and the First Lady, as Monday's New York Times indicates—and it says here, "GOP hopes to embarrass Clinton, not itself, with two hearings"—if this is what this is about, this is a sad situation for everyone involved, including each and every United States Senator. There are far cheaper ways to embarrass each other.

Let me explain. We are talking about a $200,000 loan here, however you slice it, and we are spending millions and millions of dollars to track it. If we believe the American people who today, 63 percent, say the purpose of these hearings is to hurt Mr. Clinton, and if we believe The New York Times stories, then it is, in fact, a sad time.

I want to make one further point, and then I will stop. We have these fancy machines in front of us, and they'll be showing us different documents. I feel that one of the purposes I hope to serve on this Committee is to carefully look at that as other Members will do, and I want to comment on something Senator Mack pointed out.

He had on the screen handwritten notes of Mr. Foster. What we see in that is his reasoning and why he recommends to the Clintons that they should treat their Whitewater income or losses in a certain fashion. By the way, he makes a very conservative call on that, and I guess I always believed that accountants and lawyers who were charged with advising their clients on how to deal with these personal matters have a responsibility to advise them in the best possible fashion. In this case, being mindful of the politics sur-

rounding Whitewater, clearly Mr. Foster advises the Clintons to show the gain rather than show a loss and yes, risk an audit.

Now, Senator Mack, perhaps you've never had an accountant tell you be conservative, why risk an audit? Maybe you never have, but I would suggest to you that if we asked all the Americans to step forward who have had that type of advice, it would fill coliseums.

So, whether we put these notes on a screen and hint around that there's a problem, let's get back to the question here, the papers of Vince Foster. Where did we get that note? They were turned over to this Committee by President Clinton's lawyers. They were not kept from this Committee. I think that's an important point, and when we see documents that say redacted, which means something has been left out, that is part of the procedures under which we are operating, where information may be redacted if it covers other questions and isn't relevant, whether it's a phone call or another comment.

So let's not put endless papers that say redacted, redacted, redacted. We have a procedure for dealing with redacted documents. So I hope that what I can do is just look at these documents because they're shown on these screens, and maybe some will give us something we don't already know and that would be very useful to the Committee. Mr. Chairman, I am done with my comments, and I look forward to our witnesses.

The CHAIRMAN. Senator Grams.

OPENING STATEMENT OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman, for, of course, calling this important round of hearings. Some may ask why the hearings we conduct today and over the next few weeks are relevant to the lives of the average American.

The first answer to that question is that the failure of Madison Guaranty Savings & Loan cost the American taxpayers $60 million, and there is evidence that the investments of America's First Family in the Whitewater Development Corporation played a major role in Madison's failure. We owe it to the American people, the people who work hard and pay their taxes to keep Government operating, to get to the bottom of this whole affair.

More importantly, however, the testimony we will hear over the next 3 weeks on the events surrounding the death of White House Associate Counsel Vincent Foster will unmask a side of Government we don't like to see: arrogance, abuse of power, obstruction of justice, lack of accountability to the people. These are the real subjects of our hearings. While all of us would prefer not to think that these things go on at the highest levels of our Government, we suspect deep down inside that they do.

The story you're about to hear is simple, often troubling, sometimes unbelievable, but in the end reveals why the American people don't trust their Government anymore.

I have just one chapter in this story to tell, but like the rest of this unveiling tale, it contains conflicting testimony, failures to recollect important events and questionable accounts of what really happened in July 1993. Specifically, I am referring to the events surrounding the uncontrolled rummaging by White House officials in and out of Vince Foster's office the night of his death. Or more

simply put: Who came and left, when, why, with whom, and what did they take with them? As conflicting as the accounts we are about to hear may seem, there are things we do know to be true.

Fact: Vince Foster was deeply involved in President and Mrs. Clinton's handling of Whitewater. Fact: On the night of Mr. Foster's death, the White House Counsel's suite was opened by a member of the Secret Service at 10:42. Fact: On the same night, the White House Counsel's suite was closed by that same member of the Secret Service at 11:41.

Fact: During that hour, three Administration officials, Bernard Nussbaum, then White House Counsel; Maggie Williams, the First Lady's Chief of Staff; and Patsy Thomasson, then Deputy Director of Administration at the White House entered Mr. Foster's office for some period of time. Fact: Despite requests from the Park Police to secure Mr. Foster's office for the purpose of protecting the integrity of the contents therein, Mr. Foster's office was not secured until the next morning.

Those are the facts which leave us with a number of troubling questions. Why wasn't the office of Mr. Foster, a high-ranking Government official, secured on the night of his death, especially when the circumstances of his death were not fully known? Why were three White House officials given free rein to go in and out of Mr. Foster's office that night when the Park Police were refused entry the next day? Why were these officials so intent on rummaging through Mr. Foster's office that night? Why do the accounts of that night by Mr. Nussbaum, Ms. Williams and Ms. Thomasson, conflict with each other? Why did Mr. Nussbaum, by all accounts, other than his own, leave Ms. Williams and Ms. Thomasson alone in the White House Counsel's suite? Finally, were any documents from Mr. Foster's office removed in the middle of the night?

Now, these are just a few of the questions left unanswered by the depositions this Committee took over the last few weeks, questions that still need answers. It is my sincere hope that we unearth these answers to these questions, Mr. Chairman, otherwise I'm afraid that our Government may never again regain the full confidence of the American people. The American people are generally willing to give Government the benefit of the doubt, but when the people learn about how their public officials have abused their trust and assumed the power to cover up questionable actions, their faith in Government disappears. We can't allow that to happen.

We must get to the bottom of the Whitewater affair, and we must begin today. That's why these hearings are so important and why we can delay them no further. To do otherwise would result in a failure by the United States Senate to carry out its responsibility in representing the American people. It would mean more public distrust of Government and create a nation of cynics and that, Mr. Chairman, would be the final tragedy to the chapter in the story of Vince Foster.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Moseley-Braun.

OPENING STATEMENT OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. Mr. Chairman, Whitewater seems sometimes like a very large and complicated subject to most Americans. It's been referred to even this morning as a web of interconnected scandals, but, quite frankly, the focus of this phase of the Committee's work is much more limited and much more simple. Was there improper conduct in the handling of the papers in Vincent Foster's office after his death?

At the outset, I think it's worth noting that there is substantial evidence that the applicable law was complied with in this situation. No one has even alleged that there was any interference with the Park Police investigation that constituted a violation of law. It is worth noting that the Park Police, if they thought they needed any documents from the Foster office, which was not where he committed suicide, could have asked for a search warrant or sought a subpoena duces tecum. They never made any such requests.

Of course, it is very unlikely that a judge would have ever issued a search warrant for Vince Foster's office because probable cause for a search would have been very difficult, if not impossible, to establish. The best evidence for that conclusion is found in the Park Police's own guidelines issued after this case. Those guidelines do not provide for sealing of any workplace where the death did not occur at that workplace. Even prior to the Foster case, the Park Police did not routinely request that the office of any person that committed suicide at another location be sealed.

It is also worth keeping in mind that the Park Police never requested an opportunity to go through the Foster home. But, Mr. Chairman, if the law was not violated, or likely not violated, what about ethical standards? Vincent Foster was a lawyer, and as such the canons of ethics governing lawyers imposes a duty of confidentiality, a duty that did not die with Vince Foster. The attorney-client privilege is one of the foundations of our system of justice and justifiably so. Could any American consult an attorney if they thought that their communications with their lawyer were not protected?

This duty is a formidable one and there are special considerations that apply to a Presidential lawyer like Mr. Foster that make that duty even more formidable. I think the reference has been made that there was information regarding Supreme Court nominees in that office. Bernard Nussbaum and other Members of the White House Counsel's Office, therefore, had a duty to protect the confidentiality in Mr. Foster's office. Seeking to protect the confidentiality of files in his office was, therefore, at a minimum, not an obvious violation of applicable ethical standards. Those standards, in fact, called action to protect the confidentiality of the files in that office.

Mr. Chairman, I would point out that even the requests for information by this Committee, which the Chairman and the Ranking Member signed, has in it language that recognizes the existence of that confidentiality, the attorney-client privilege. It says:

> In connection with the above request, particularly with regards to documents in Vincent Foster's office at the time of his death, we recognize that these materials are likely to include documents subject to claims of privilege, and if any documents

are withheld based on the assertion of any privilege, please provide a log identifying the date, et cetera, and the basis for the privilege asserted.

That has been done and complied with in this case. The White House has cooperated fully in that regard.

That leaves, however, a third area of inquiry. Even if the handling of the documents in Vince Foster's office comported with all applicable legal and ethical standards, was there, nonetheless, an appearances issue, a question involving the penumbra of ethics rules that is worth considering?

That, it seems to me, is where this Committee's inquiry will really be focused, once it is firmly established that there were no violations of law involved and no violation of applicable ethics rules.

Mr. Chairman, in your statement, you said, and I quote, "the Senate Whitewater hearings will be fair, impartial and thorough."

I want to commend you for that statement and for that commitment. This is not a time for trying to score partisan political points, and these hearings should not be a forum for rumor and innuendo that are not supported by fact, nor should these hearings be allowed to become another battleground for the kind of culture wars that characterized the handling of Dr. Foster's nomination. Frankly, that seems to have an unfortunately growing role in our politics.

Rather, this is a time to try to ascertain the facts and to try to understand what happened. That can only happen if we go where the evidence takes us and avoid any attempts to demonize people because we disagree with their views on policy issues. We must avoid any temptation to suggest that wrongdoing has occurred here because we don't like what someone stands for or because we think that person is too influential or we want to cut him or her down to size. Allegations made merely to seek advantage in upcoming elections that are unsupported by the evidence have no place here.

The hearings we are conducting must be fair and impartial, and that involves keeping closely in mind what precipitated the events we are examining in this phase of the Committee's work. Again, that is the tragic death of Vincent Foster. We are not here today to review the cause of his death. We looked at that issue last year.

Moreover, every official agency of Government that has examined the cause of death has reached the same conclusion: that Vince Foster's death resulted from suicide. Despite the cottage industry that has arisen to offer bizarre alternative theories as to what happened to Mr. Foster, there, frankly, is no reasonable doubt on that score. Fairness demands that we keep constantly in mind that Vince Foster's death had a devastating effect on those with whom he worked. He was very popular. He was both respected and liked.

What is more, as a Member of the White House staff, he shared the long hours, the frantic pace and the huge amount of work that characterizes those jobs. This kind of working environment and the closeness that it engenders made his death hit other White House staffers very hard. Most of them, frankly, were not just co-workers; many of them were friends, even good friends. Vince Foster's death affected them all very deeply.

We sometimes act as if people who enter public service give up at least part of their humanity when they do so, but that is not the case. Vince Foster's co-workers and friends were not just members of the White House staff; they were human beings, they were peo-

ple who grieve and cry and act just like any other American facing a similar situation. That, I believe, is an important thing for us to keep in mind. The American people, justifiably, do not want the White House or Congress or any other part of Government treated any better than they are. We want the same rules to apply to everyone. We all expect a suicide involving a member of the White House staff to be fully investigated. In fact, given that the White House is involved, most Americans would expect that a higher investigative standard would be used than in other cases.

However, the American people are also a compassionate people. Most Americans know how they would react if a good friend died tragically and unexpectedly and they can empathize with the situation that the friends of Vince Foster faced. Most Americans view a death of this kind not just as a matter for the police, but a moment for friends and family to come together to support one another.

While there is dispute as to whether the Park Police officer was momentarily kept from Mrs. Foster the night that Vince Foster died, I would think it would not be at all strange if it happened because, quite frankly, no American wants to share the moment of greatest grief with strangers, and that includes the police.

I want to conclude, Mr. Chairman, by making one final point. This Committee has a responsibility to be thorough, but it also has a responsibility to finish. Most, if not all, of the witnesses we will hear from in this phase of the Committee's work have been deposed as many as half a dozen times before, if not more. We are asking many of them who knew Vince Foster well, people who were close to him both professionally and personally, to relive a very painful part of their lives. We are inevitably dredging up painful memories for Mrs. Foster and the Foster family.

I hope that this Committee, therefore, will not lose sight of the need to be expeditious, as well as thorough, and of the need to allow all of these people to come to closure with the death of Vince Foster.

In short, I hope that we will meet both our professional obligation and our human obligation. If we work together we can forgo the opportunity for partisan gamesmanship, and I'm sure that we could meet both of those critically important obligations and put this issue to rest once and for all.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Shelby.

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman. I want to thank you for holding today's hearing and for also, Mr. Chairman, laying out so succinctly the focus of these hearings, what the Committee has done and where the Committee is going in pursuing its mandate to examine the facts surrounding the handling of documents in Vince Foster's office after his death.

While some of these issues have already been exposed in the press, as a Member of this Committee, I hope, Mr. Chairman, to further examine with witnesses any interference or improper con-

trol by the White House in the investigation of Vince Foster's death.

The testimony we will hear before the Committee, I believe, will show several important facts about the handling of documents in Foster's office and the investigation of Vince Foster's death as a whole.

Facts, Mr. Chairman, that will clearly demonstrate, in my view, that the level of White House involvement substantially prevented law enforcement officials, the Department of Justice, the Park Police, and the FBI from conducting their investigation according to standard operating procedures. I'll identify just some of these facts the Committee will hear about in the coming days about the White House's involvement in the investigation of Vince Foster's death.

First, this Committee will hear testimony that will show that even though the White House was publicly proclaiming that the investigation was being conducted according to standard operating procedure, "just like any other investigation," and that the Park Police was the lead agency in the investigation, the White House refused to allow Park Police officers to enter Foster's office to search the day after his death.

Second, Committee testimony will further show that later that day, July 21, 1993, it was agreed between law enforcement authorities and the White House Counsel's Office that the Department of Justice would supervise the search of Mr. Foster's office and that it would be the Department of Justice that would review documents for relevance and privilege there. The next day, however, when law enforcement officers arrived to conduct the review of Mr. Foster's office, the White House broke the agreement on how the office would be searched. Instead of the Department of Justice conducting the search according to the agreement that they had previously entered into, the White House told law enforcement officials that it would review the documents, categorize them and let law enforcement officials know what they could and couldn't look at.

Third, testimony by the Department of Justice, Park Police and the FBI will show that the search was viewed as a sham, that law enforcement officers were there for decoration only and that many of them did not feel that they could say that they had conducted an investigation based on the way the White House controlled the search and access to documents in Mr. Foster's office.

Fourth, Mr. Chairman, the testimony before the Committee, I believe, will make evident the significant disagreements that arose early on between top law enforcement officials and the White House over the White House's role in the investigation.

Finally, Mr. Chairman, we will hear about the very serious concerns that were raised from the beginning of the investigation by career law enforcement professionals that believe that the White House was improperly affecting the proper conduct of the investigation.

Mr. Chairman, I look forward to hearing from today's witnesses and to participating in these important hearings for the American people.

Thank you.

The CHAIRMAN. Thank you, Senator Shelby.

Senator SARBANES. Senator Murray.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Mr. Chairman, at some point before July 20, 1993, Vincent Foster wrote about this city, "here ruining people is considered sport." Then, by his own hand, he took his life. Vincent Foster, a successful lawyer, a devoted father and husband, a loyal friend, was a victim of the partisan bickering in the city and his own depression. Now, 2 years later, the Banking Committee of the United States Senate will take 3 or possibly 4 weeks to investigate how, in the emotional chaos of discovering their co-worker and friend had died, White House staff handled the contents of his office. Once again, Mr. Chairman, I fear that Vincent Foster and his family will be victimized. I urge all of us to keep perspective.

It seems to me, Mr. Chairman, that whenever a high-profile tragedy occurs in this country, a whole lot of far-flung conspiracy theories emerge. I do not subscribe to unfounded allegations and radical beliefs. I prefer to rely on the time-honored virtues of fairness and common sense.

With that in mind, I have examined the depositions and reviewed the documents. I will say, Mr. Chairman, there are some inconsistencies in various recollections of what happened on the night of July 20, 1993 and the next few days. Based on those inconsistencies, I think we can draw one of two broad conclusions from the testimony.

One alternative is that within one single hour of finding out that their beloved friend and co-worker had committed suicide, White House staff plotted an elaborate conspiracy which they executed in 45 minutes, a conspiracy which no investigator to date has yet been able to uncover. Or, Mr. Chairman, we can conclude that a grief stricken and distraught collection of very human people made some decisions which we, in hindsight, might question.

There is one aspect of the depositions that was especially poignant to me: The number of times witnesses testified to the emotional distress at the Foster family home and the White House. Words kept recurring: "Visibly upset," "distraught," "sobbing," "exhausted," "physically spent," "grief stricken," "total shock" and "shaken." One seasoned police official described the scene at the White House as one of "total disbelief and nearly nonfunctional." That is how people react when they lose a loved one.

As I read those depositions, I asked myself, how would we react if one of our most trusted and loyal staff members committed suicide? Would we demand that their issue files about the Banking Committee be searched for a suicide note? Would we disregard their family's concerns about the privacy of their loved one's personal papers? We would not do that, Mr. Chairman. Real people in real places with real grief do not behave that way. That is how I approach this unhappy situation.

Mr. Chairman, I hope that we can keep some perspective as we go through these hearings and hear the testimony. Let's not add to the chilling thought that, here, ruining people is considered sport.

The CHAIRMAN. Thank you, Senator.

Senator Bennett.

OPENING STATEMENT OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman. I have enjoyed the opening statements and the scope that we seem to be getting into here. I was interested when Senator Boxer quoted from The New York Times and that stimulated me to go to the editorial that appeared in this morning's Times, and I would like to quote from it because it summarizes my view of the scope of this thing.

The Times begins:

> When the matter now known as Whitewater first arose during the 1992 Presidential campaign, candidate Bill Clinton called it no big deal, but he and his staff in the campaign, and later at the White House, stonewalled on the details that would have revealed whether he and Mrs. Clinton were telling the truth about their finances. Today's renewed Senate hearings on Whitewater are the bitter fruit of those original evasions. For reasons known but to them, the Clintons have offered tricky answers that brought confusion rather than clarity to their land deals with the high-rolling Arkansas banker and campaign supporter named Jim McDougal.

The editorial goes on to say:

> For 3 years now, the Clinton team has acted as if anything connected to Whitewater was a can of worms that no one had a right to open. It has denounced as political enemies anyone who expressed reasonable curiosity about who paid what moneys and for what purpose. Some of those in charge of the inquiry are indeed their political enemies, yet they are only seeking what should have been offered voluntarily.

The editorial summarizes this with a single sentence that, in the classic line, I wish I had been able to write myself:

> One of the enduring mysteries of this Presidency is why Mr. Clinton has been willing to absorb such tremendous political damage rather than authorize a full accounting of the Whitewater deal.

Senator Sarbanes summarized it well, however, when he said today's focus is not on this overall aspect that we've heard so much about in the opening statements. Today's focus is on the proper handling of the documents in Vince Foster's office. Some have asked why we need to do that so long after the fact, as the death of Mr. Foster was a personal tragedy of a man who was well respected and well liked.

The reason we need to do that, Mr. Chairman, is because overlaying the tragedy of Vince Foster's suicide is the unique position that he held in the White House. We've heard of his close personal relationship with the Clintons. He not only handled a series of complicated and sensitive matters for the First Family, personal and public, but he also held the highest level of security clearance with access to the most confidential and privileged communications in the White House. Given Foster's unique position within the White House, I'm not comfortable with the assertion that the appropriate amount of sensitivity was shown in dealing with materials contained in his office, particularly when one considers that some of the senior members of the White House staff at the time had the suspicion that he might have been the subject of an extortion attempt. We now know that is not true, but that existed at the time.

Let's go beyond the night of his death. I can be sympathetic to the reaction of people at the time of his death. Here is what happened several days later.

On July 22, 1993, Mr. Nussbaum engaged in two important sorting exercises. The first document quick shuffle took place in the presence, but not with the blessing, of independent law enforce-

ment agencies. The second, more private performance took place later that day with Ms. Maggie Williams in Mr. Foster's office after the Department of Justice and Park Police personnel had left the White House. The personal documents of the Clintons which Mr. Nussbaum sorted later in that day were taken to the Clintons' private residence in the White House where, it's been asserted, they were never reviewed by the Clintons.

Now, having an accurate accounting of the documents contained in the Foster office is central to the resolution of many of the questions we are charged with answering. Three different witnesses have given statements regarding the deposition of a portion of the documents which were divided after the investigators from the Department of Justice and the Park Police left the White House on July 22, 1993. This second sorting took place under the control of Ms. Maggie Williams, the First Lady's Chief of Staff, and Bernard Nussbaum, the General Counsel of the White House. This Committee's interest in preserving the chain of custody of the documents which came from Mr. Foster's office is to ensure that no documents were either destroyed or tampered with. It's important to establish who had access to them and when and where.

In her deposition to the Committee staff, Ms. Williams asserts that she was called by Bernie Nussbaum to pick up a box of the Clintons' personal documents and send them to Mr. Bob Barnett at the law firm of Williams & Connolly. She states that when she found Mr. Nussbaum, he had virtually finished most of the sorting. Ms. Williams then called Hillary Rodham Clinton and told her she, Ms. Williams, would take some personal files that were to go to Williams & Connolly to the Clintons' private residence in the White House although, Ms. Williams maintains, Mrs. Clinton never asked and Ms. Williams never told Mrs. Clinton to which personal files she was referring.

Then Ms. Williams took the files, with the help of Tom Castleton, an intern, to the private residence. She has no memory of telling him about the contents of the boxes, other than that they were private papers.

Five days later, Ms. Williams arranged to transfer the information to Mr. Barnett without, she says, any prior instructions from either the First Lady or the President. So her version is she took them to the residence without the First Lady asking for them and removed them from the residence without the First Lady or the President having made any comment about them.

Now, Mr. Nussbaum has a different recollection of these events. He maintains that he called Ms. Williams and that she helped him for less than half an hour to identify the Clintons' personal files still contained in Vince Foster's office. The documents were to be taken to the private residence of the Clintons so that they could decide to which lawyer these files should be sent. This implies to me, Mr. Chairman, that Mr. Nussbaum anticipated a serious Clinton review of the contents of the box.

The third version, this portion of our investigation revolves around the statement of the intern, a young man named Thomas Castleton. Mr. Castleton recalls being asked to help Ms. Williams transport a box of documents from Mr. Foster's office to the Clintons' private residence and on the way Ms. Williams tells him that

the Clintons will have to review the contents of the box to ascertain what's in it.

Now, it's essential for this Committee to make its best determination of who had access to the documents from Mr. Foster's office, which documents were involved and at what times. Were any documents removed? If so, who removed them and why? These are legitimate questions, important questions, but they are made even more important by the virtue of who Vince Foster was and what his duties were, separate and apart from his position as personal lawyer to the Clintons. It's my sincere hope that, in this hearing, we will get one set of answers to this varying set of descriptions of what happened several days after the initial impact of the grief had hit these people and they had had time for a little sleep and a little reflection and then went about this particular activity.

I thank the Chair.

The CHAIRMAN. Thank you, Senator Bennett.

Senator Sarbanes.

Senator SARBANES. Senator Simon.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Mr. Chairman. I differ from the others here in two respects. One is I'm a Member of the Judiciary Committee, along with Senator Hatch. We were designated to be here. I differ from everyone else in the Committee in that I was one of three to vote against the resolution setting up this Special Committee. Senator John Glenn, Senator Jeff Bingaman and I voted against it.

Why did I vote against it? Number one is the money problem that has been mentioned. The Wall Street Journal said on June 7, 1995, $10 million has been spent by the Special Counsels. Newsweek says on July 3, 1995, $11 million. I don't know if that means $1 million a month is being spent. Resolution Trust Corporation is spending another $3–4 million, $3.6 million. I'm not sure the public is going to get $1 million worth out of this additional hearing. I hope my judgment is wrong on that.

A second reason for my voting as I did is in your opening remarks, Mr. Chairman. You said this should not be a partisan issue, and I agree completely. I do believe there are some who view this as an opportunity simply to throw mud at the President. Senator Grams, in his remarks, said people are losing faith in Government. I think one of the reasons people lose faith in Government is that we are becoming increasingly partisan. I'm in my 21st year here in Washington. We're more partisan today than we were when I came here. I don't think the public is well served by that. If in this process we end up throwing some mud at the President, we demonstrate more and more partisanship, and I don't think either political party is going to be well served, nor is our system going to be well served.

A third reason for voting against the resolution is I'm concerned about what we're doing, not just in this Committee, but in others, to innocent people. Senator Murray quoted Vince Foster as saying, "ruining people is considered sport here in Washington." We're going to be hauling people before the television cameras, people who are little people in Government, who are going to be fright-

ened. I hope we'll try to be fair to people in the process of all of this.

What we know is that mistakes have been made and we'll probably find some more mistakes that were made. In part, people were in shock, as has been pointed out. Mistakes, I think, were made by the White House in not disclosing everything quickly. If there is not full disclosure at this point, I think it ought to be as full as possible as quickly as possible.

We will find conflicts. They have been referred to by the Members here already. That always happens in any series of dramatic events. I wrote a biography of an abolitionist who was killed by a mob in 1837, Elijah Lovejoy. People who were there at the same spot, saw the same thing, told different stories. We have the same kind of experience with the Lincoln assassination and the Kennedy assassination, and people are still writing stories about a conspiracy in terms of the Lincoln assassination and the Kennedy assassination.

I think the basic question is was there a conspiracy to cover up? Since I have been designated to be on this Committee, I have read a great deal more than I anticipated reading about Whitewater. My initial judgment is that mistakes were made, but that there has been no conspiracy to cover up. I could be wrong in that judgment, but I think that's the basic question that we face here, and that's what we ought to approach, and we ought to follow your admonition as you opened it, Mr. Chairman, that we try not to make this a partisan affair. That's not going to be easy, but I hope we can do that. If we do, we will serve the American people well, and if we do, I will tell you afterwards I voted wrong when I voted against creating this Committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator, thank you for your very thoughtful statement.

That is not to mean that all of our other colleagues have not made thoughtful statements.

Senator Murkowski.

OPENING STATEMENT OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much, Mr. Chairman. I want to thank you and Senator Dole for appointing me to be a Member of this Special Committee. It's my hope that the Committee will provide a service to the public in finally resolving hopefully most, if not all, of the issues relating to Whitewater, and finally putting to rest the questions surrounding the death of White House Counsel Vincent Foster.

When the United States Park Service Police discovered the body of Vincent Foster on the Federal park land in Virginia, many questions were raised about the Park Service's handling of the investigation. At that time I was the Ranking Member of the Energy Subcommittee with jurisdiction over the Park Service. At that time I tried to get the Subcommittee to make some inquiries and potentially hold some hearings relative to the jurisdiction which we had. The Park Service Police declined, saying that the matter was under the Department of Justice and, therefore, was out of their area of jurisdiction.

Mr. Chairman, there have been numerous stories in the press as to the events surrounding the death of Vincent Foster, who did what in the White House in the hours and days following his death. What we do know is certain, that the Federal law enforcement personnel, including the Park Service Police, the FBI and the Justice Department, were impeded by the White House in conducting their investigation.

Law enforcement officers were denied access to documents in Vince Foster's office. Instead, all the documents in his office were screened by Bernard Nussbaum, many of which were packaged in boxes and sent to the Clintons' personal living quarters. As evidence will show, Bernard Nussbaum and other White House officials visited Foster's office soon after his death in an effort to locate a note that might explain his motive for committing suicide.

Law enforcement professionals know that in the vast majority of suicides, a note is left and the absence of such a note could be an indicator of some other motive.

On July 22, when the White House officials were searching the office, White House Counsel Bernard Nussbaum removed several documents and papers from Mr. Foster's briefcase, but they failed to find a note that day. In fact, according to the testimony I expect we will hear, Nussbaum gave everyone the impression that Foster's briefcase was empty. Yet there is evidence that Nussbaum was told that there were pieces of torn paper in Foster's briefcase, but he did nothing to find out if those pieces of paper were relevant to the investigation. Then, somehow mysteriously, 4 days later, someone looked into the briefcase and found the torn-up note that ultimately provided the motive for the Foster suicide.

Mr. Chairman, I have the briefcase in question here. This briefcase is the property of Vincent Foster. It's from the Rose Law Firm Professional Association, Little Rock, Arkansas. Vincent Foster, Jr., Rose Law Firm, 120 East 4th Street, Little Rock, Arkansas with the phone number. As anyone can plainly see, it would be pretty difficult not to see 27 pieces of paper from a legal notebook.

Now, here's 27 pieces of paper in this briefcase. They represent, if you will, an 8½ by 11 sheet of paper. If one is looking in here, you're going to find 27 pieces of paper, we've already had testimony that other papers had been removed from the briefcase. So anyone looking in here—it's pretty hard not to observe that there's some pieces of paper in the briefcase in question.

Certainly, had the Park Police or the FBI been examining this briefcase, there is no doubt that they would have found the note and provided the President and the American people with the rationale for the Foster act, but the professionals did not handle the investigation. The White House handled the investigation. It's very hard for this Senator to understand why it took 4 days, 4 days to discover this note if it was, in fact, in Foster's briefcase all along. Now, maybe it was an oversight, but that's what happens when you allow the political people to take over an investigation that should be run by professional law enforcement personnel.

Mr. Chairman, I look forward to resolving this and the many other issues that will have to be addressed before we can finally close the books on Whitewater and the Vince Foster death.

Senator SARBANES. Mr. Chairman, could I inquire of Senator Murkowski whether he got that briefcase from the Independent Counsel?

The CHAIRMAN. Yes, the Independent Counsel did furnish us with——

Senator MURKOWSKI. I made the request for the briefcase, Senator Sarbanes.

Senator SARBANES. When was it furnished to us?

The CHAIRMAN. Yesterday.

Senator SARBANES. Thank you.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator SARBANES. Was this side advised of the furnishing of the briefcase?

The CHAIRMAN. Yes. We had left word to the Minority counsel, but I think there was a little problem in some communications. We had made some requests, but counsel did advise or attempted to advise Minority counsel that we had received this yesterday.

If I might, just for purposes of clarification, there were at least a half dozen phone calls that were made yesterday by our counsel to Minority counsel to advise him of this and other matters, and during that period of time we were not able to make contact, so I just suggest this was not some kind of slight of hand.

Senator Frist.

OPENING STATEMENT OF SENATOR BILL FRIST

Senator FRIST. Thank you, Mr. Chairman. Last year, the Banking Committee reviewed the circumstances surrounding the tragic death on July 20, 1993 of Vincent Foster, the Deputy White House Counsel. At the end of the hearings, the Committee determined that Vincent Foster did indeed take his own life in Fort Marcy Park.

Over the next several weeks, we will focus on the White House staff's handling of the documents in Mr. Foster's office immediately after his death. We will attempt to determine whether certain White House staff removed documents from Mr. Foster's office to prevent investigators from seeing those documents.

The primary facts that we will be reviewing over the next several weeks are as follows:

On July 20, 1993, between 5 and 6 p.m., Vincent Foster's body was discovered in Fort Marcy Park. U.S. Park Police then notified Mr. Foster's family and close friends about his death between 8:30 and 9:40 p.m.

Later that evening, Park Police requested that Mr. Foster's office be sealed immediately. The office was not sealed. Instead, around 10:30 p.m., Bernard Nussbaum (White House Counsel), Margaret Williams (the First Lady's Chief of Staff) and Patsy Thomasson (Director of White House Office Administration) entered and looked through Mr. Foster's office. Ms. Thomasson had been sent there by David Watkins, Director of White House Management, to search for a suicide note. Finding no note, the three left the office around 11:41 p.m. A Secret Service agent asserts that Ms. Williams exited the office with a box of documents, a claim that Ms. Williams denies.

The White House made no effort to seal Mr. Foster's office until July 21, when Mr. Nussbaum posted a Secret Service guard at the office door. Mr. Nussbaum, however, refused to let Park Police search the office or interview White House aides.

On July 22, investigators from the Department of Justice and the Park Police expected they would finally have the opportunity to search for and review documents in Mr. Foster's office. They were not allowed to do so. Instead, Mr. Nussbaum had the investigators relegated to watching him sort through Mr. Foster's files and briefcase. After emptying various files from Mr. Foster's briefcase, Mr. Nussbaum claimed that there was nothing else in it.

On July 26, Steven Neuwirth, a White House lawyer, allegedly discovered a torn-up suicide note in the very same briefcase that Mr. Nussbaum had previously declared empty. Mr. Neuwirth notified Mr. Nussbaum immediately of the existence of the torn-up note. However, it was not until July 27 that either the President or the Park Police investigators were told about the existence of the torn-up note.

I hope that during the course of these hearings, we will be able to determine whether certain White House staff removed documents from Mr. Foster's office to prevent investigators from seeing those documents. In particular, I hope that we will get answers to the following questions that I have about the discovery of Mr. Foster's torn-up suicide note:

The first question is: When and under what circumstances did the White House discover the torn-up note? This question was discussed at length by Senator Murkowski a few minutes ago.

The second question relates to the July 26 discovery by Mr. Neuwirth of the presence of the torn-up note in Mr. Foster's briefcase. Mr. Neuwirth reportedly blanched upon discovering it, and immediately told Mr. Nussbaum about the note's existence.

So here, at long last, was the note that everybody had been looking for. A note from a highly-placed official who worked closely with the President on sensitive, nationally important matters. Why did Mr. Nussbaum wait 26 hours before telling President Clinton about the discovery of the note? Why did Mr. Nussbaum wait a total of 30 hours before telling the appropriate law enforcement officials about the discovery of the note? My concerns about Mr. Nussbaum's delay are justified, Mr. Chairman, as the Department of Justice itself has conducted an obstruction of justice investigation on these very questions.

It is, therefore, my hope that these hearings will yield answers to the troubling questions that my colleagues and I have raised here this morning, and provide some resolution to the circumstances surrounding the sad and tragic death of Mr. Foster.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

It was my intent to continue to move forward, as some of my colleagues have urged, with a degree of speed but not unduly, but I don't think we would be doing our job if we did not attempt to examine Mr. Hubbell and even see if we could finish with the questioning. So I'm now going to ask that Mr. Hubbell step forward for the purpose of being sworn in.

[Witness sworn in.]

Mr. Hubbell, let me first, if I might, ask if you would identify the person sitting with you.

SWORN TESTIMONY OF WEBSTER HUBBELL
FORMER ASSOCIATE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

Mr. HUBBELL. Yes. Sitting with me is Laura Shores, who is an attorney with the law firm of Howrey & Simon, who represented me before the Independent Counsel.

The CHAIRMAN. Mr. Hubbell, first, I would like to welcome you to the hearing, but I also think it's fair to say that we want to thank you for your cooperation, for not only appearing here voluntarily, but for voluntarily appearing in 2 days of depositions before the Committee staff, the professional staff of the Committee on both sides, to give your testimony and to give your depositions.

My sense of your testimony in the depositions is that you have tried to be fair, candid, cooperative and forthcoming, and I believe that needs to be said publicly. We are particularly appreciative of your appearance during a very difficult period in your own life, and we are appreciative, once again, of your cooperation.

Mr. HUBBELL. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, if you would like to make any statement——

Senator SARBANES. I have nothing.

The CHAIRMAN. —if not, I would ask Mr. Chertoff, Counsel to the Majority, if he would conduct his part of the review.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Hubbell, welcome. Good morning. I think we're still in the morning, or actually the afternoon now. If you need me to clarify any question or you want an opportunity to talk to your attorney, let me know, we'll give you that opportunity, all right?

Mr. HUBBELL. I will do so.

Mr. CHERTOFF. Mr. Hubbell, would you briefly describe to the Committee your professional background and experience up until the time you came to Washington with the President in 1993.

Mr. HUBBELL. OK. I graduated from the University of Arkansas School of Law in 1973 and, upon doing so, joined the Rose Law Firm, where I practiced in the litigation section of that firm until I left the firm briefly to serve as the Chief Justice of the Arkansas Supreme Court in 1984. After I left the Supreme Court, I returned to the Rose Law Firm and stayed there until I came to Washington on January 20, 1993, primarily practicing in the litigation section for all of my career.

Mr. CHERTOFF. Am I correct that at one period of time you were the Mayor of Little Rock?

Mr. HUBBELL. Yes. The Mayor of Little Rock is a nonpaying position in Little Rock, at least it was up until a year ago, and I served on the city board of Little Rock for 6 years, 1978 through 1984, and served as Mayor for 2 years.

Mr. CHERTOFF. During the 1980's, how large a law firm was the Rose Law Firm?

Mr. HUBBELL. The law firm grew from a firm of about 20 lawyers in the beginning of the 1980's to a firm of approximately 50 lawyers by the end of 1990.

Mr. CHERTOFF. How many of those were partners?

Mr. HUBBELL. Approximately 30 by the end of 1990.

Mr. CHERTOFF. When did you first meet Vincent Foster?

Mr. HUBBELL. I first met Vincent Foster when I interviewed with the firm in early 1973 and then officially met him when I joined the firm in May 1973. I may have met Vince—we crossed in law school, but he was 2 years ahead of me and I didn't socialize with Vince at that time.

Mr. CHERTOFF. After you joined the firm, did you become good friends with Mr. Foster?

Mr. HUBBELL. Yes, I did. We practiced in the same area for a long period of time, we shared secretaries, and we worked on cases together until we both came up here.

Mr. CHERTOFF. Did you come to learn some of the details of his background?

Mr. HUBBELL. Yes, I consider Vince a very, very good friend, and I knew a lot of his educational background and we shared a lot. We shared a lot of good times. We grieved together. We worked together. It was a constant communication over a period of almost 20 years.

Mr. CHERTOFF. Did you come to learn that, in fact, Mr. Foster had graduated at the top of his class at law school and had passed out first on the bar exam?

Mr. HUBBELL. Yes, he did. He was also managing editor of the Arkansas Law Review.

Mr. CHERTOFF. Did you also come to learn that way back when he was a little boy he was in kindergarten with the future President of the United States and the future Chief of Staff to the White House?

Mr. HUBBELL. Yes, they all grew up in Hope, and Vince and Mack both graduated from Hope High School.

Mr. CHERTOFF. During the period of time up until 1993, was Mr. Foster active in politics when he was at the firm?

Mr. HUBBELL. Vince was always behind the scenes. He worked and helped the President. He never had an active role in anyone's campaign, other than many of us played active roles in various judicial campaigns.

Mr. CHERTOFF. What area of legal practice did Mr. Foster specialize in?

Mr. HUBBELL. Litigation, civil litigation.

Mr. CHERTOFF. That involves going to court and arguing appeals and things of that sort?

Mr. HUBBELL. That's correct. He did not do any criminal work, but he did civil litigation for at least 22 years.

Mr. CHERTOFF. Now I'd like to ask you about a few other people who at some point became partners at the firm. Was there a point at which Hillary Rodham Clinton joined the law firm?

Mr. HUBBELL. Yes, Hillary Clinton joined the firm in 1977 when her husband was sworn in as Attorney General of Arkansas.

Mr. CHERTOFF. When did she become a partner at the firm?

Mr. HUBBELL. Either 2 or 3 years later she became, what we call members of the firm because we were a corporation, but they're the same as partners in many other firms.

Mr. CHERTOFF. Now, what was her area of legal practice?

Mr. HUBBELL. She was also in the litigation section and worked on cases with Vince and I and others.

Mr. CHERTOFF. What about William Kennedy?

Mr. HUBBELL. Bill Kennedy was with the firm. He actually came, I believe, before Hillary did, or about the same time. Then he left the firm to become—he had worked for Senator McClellan and he came up to be Senator Hodges' Chief of Staff. After Senator Hodges' term was up, he came back to the firm. He was initially in the litigation section with Vince and Hillary and I, but in the late 1970's he switched and started doing securities and banking work.

Mr. CHERTOFF. Now, am I correct that by the late 1980's, you and Mrs. Clinton and Mr. Foster were working together in the litigation department or section of the firm?

Mr. HUBBELL. Yes, we were.

Mr. CHERTOFF. Is it fair to say that you had occasion, the three of you, to work together on various cases?

Mr. HUBBELL. Yes, we worked, the three of us, on cases together and obviously two of us on big cases together and we were very good friends.

Mr. CHERTOFF. I assume, also, from a professional standpoint you had occasion to talk among yourselves even about the cases each of you was working on individually.

Mr. HUBBELL. That's correct, both going to lunch together in various partner's offices, talking about the work that we were each doing.

Mr. CHERTOFF. Now, in the beginning of 1993, a number of you from the Rose Law Firm went to Washington. Can you tell us, other than the obvious fact that Mrs. Clinton went to Washington, who left the firm to take various positions with the Clinton Administration?

Mr. HUBBELL. Vince left the firm to become Deputy White House Counsel. I left to become an Assistant to the Attorney General in the Justice Department. Within a month, Bill Kennedy came to be an Associate Counsel in the White House.

Mr. CHERTOFF. Let's turn, first, to your career at the Department of Justice. I'd like to focus your attention really on the period 1993, from the time you arrived in Washington up through June or July of 1993. How did you come to be appointed to a position within the Department?

Mr. HUBBELL. I had been asked by the President whether I was willing to come to Washington and be a part of the Administration. He initially asked me to visit with Zoe Baird to see if there was a fit. I interviewed with Zoe Baird in early January, and she asked that I join the Department of Justice with her and be available on January 20.

Mr. CHERTOFF. Now, we all know that ultimately Zoe Baird didn't become the Attorney General. At the point in time that Janet Reno became Attorney General, did you assume a position in the hierarchy of the Department of Justice?

Mr. HUBBELL. I had been an assistant to Stuart Gerson, and I played that same role with Janet Reno, but probably more expanded. At that time, we still did not have any Assistant Attorney Generals even nominated, or a nominee for Deputy or Solicitor as well.

Ultimately, I became Acting Associate Attorney General and then was confirmed by the Senate and became Associate Attorney General.

Mr. CHERTOFF. Associate Attorney General was the third position in the Department?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. You basically had responsibility for what are generally regarded as the civil parts of what the Department does?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Now, did you come to know a man by the name of Phil Heymann?

Mr. HUBBELL. Yes, I did.

Mr. CHERTOFF. Was he the Deputy Attorney General?

Mr. HUBBELL. Yes, he was the Acting Deputy and then upon being confirmed he became Deputy Attorney General.

Mr. CHERTOFF. What were his responsibilities as Deputy?

Mr. HUBBELL. Phil was the number two position at Justice. He supervised not only the criminal division, but the criminal divisions of the Department of Justice, such as the FBI, the DEA, the marshals and the prisons.

Mr. CHERTOFF. Were you aware that Mr. Heymann had a lot of experience from his prior career in working at the Department of Justice and particularly in the area of criminal law?

Mr. HUBBELL. Yes, I was. I believe he was the Assistant Attorney General for the criminal division at one time and was aware of his extensive background in the area of criminal law. I actually—Phil and I talked a lot about it and I interviewed Phil with Janet Reno when he first came to the Department of Justice.

Mr. CHERTOFF. You obviously thought he was well qualified to direct the criminal activities, the criminal investigative activities of the Department?

Mr. HUBBELL. Yes, I did.

Mr. CHERTOFF. Now, within the top hierarchy of the Department, is it fair to say that you were the principal liaison with the White House?

Mr. HUBBELL. I think that's fair. I mean, there was no real line of authority to the White House, but I was—because of the unique nature of what happened with regard to Zoe Baird and my familiarity with a lot of people in the White House, I would say that is correct.

Mr. CHERTOFF. You had occasion, both socially and in terms of your job responsibilities, to be over at the White House?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Did you ever visit Vincent Foster in his office?

Mr. HUBBELL. I think, except for one time, every time I went to the White House I tried to stop by and see Vince.

Mr. CHERTOFF. Did you also come to know the White House Counsel?

Mr. HUBBELL. Yes, I did. I worked with him briefly in the transition and, then, like I said, I would probably be in contact with Bernie and/or Vince on a daily basis.

Mr. CHERTOFF. Bernie is Bernard Nussbaum?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. He was a lawyer in New York; correct?

Mr. HUBBELL. Yes, he is.

Mr. CHERTOFF. Am I correct that at the time that Mr. Foster joined the White House Counsel's Office, he took the number two position directly under Mr. Nussbaum?

Mr. HUBBELL. That's correct. I believe they were announced on the same day.

Mr. CHERTOFF. Then Mr. Kennedy was an Associate White House Counsel as well?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. Now, where were Mr. Foster's and Mr. Nussbaum's offices physically located?

Mr. HUBBELL. They were on the top floor of the—I guess they call it the West Wing, in one corner of the White House there.

Mr. CHERTOFF. Physically in the White House building?

Mr. HUBBELL. Physically in the White House building on the top floor, yes.

Mr. CHERTOFF. I'm going to ask someone to put up on the screen—we have a little schematic which is going to go up on the screen in a moment. To give credit where credit is due, it's been hand drawn by the brother of one of our staff people based in part on a Washington Post drawing. If I could direct your attention—that's good. If I could direct your attention to the lower left-hand corner, is it your recollection that the White House Counsel's suite was in a corner of the West Wing, as you can see it on the screen?

Mr. HUBBELL. I believe I described it and that's where it is, yes.

Mr. CHERTOFF. Now, am I also correct that you would enter the office by going into what would be described as a reception or common area in which there were a number of desks?

Mr. HUBBELL. Yes, I believe there are at least four or five desks in what you designated as the reception area. It wasn't really a reception area. It was pretty crowded, but there were about four or five desks there.

Mr. CHERTOFF. Then, if one left the common area, you could either go into Vincent Foster's office or Bernard Nussbaum's office, both of which opened into the common area?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. So, then, in order to get access to Mr. Foster's office or to Mr. Nussbaum's office, you would walk through what we've described as a reception area?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. Now, if you were to walk out of the White House Counsel's Office and, oriented the way the picture is on the screen, you were to take a right and go down the hall, whose office would be next?

Mr. HUBBELL. The next office, I guess, to the right, as I'm looking at the screen, from the reception area would be the reception area for the First Lady and then the next office would be the First Lady's office.

Mr. CHERTOFF. Then, if you continued one office further to the right, would you hit Margaret Williams' office?

Mr. HUBBELL. I have to say that I've never been in Maggie's office, so I don't know the answer to that question.

Mr. CHERTOFF. Now, if I can ask for the other schematic to go up for just a second, we're going to drop down one floor to the first floor and orient it in exactly the same direction as the prior drawing. Am I correct that the Office of the Chief of Staff, who was then Mr. McLarty, in July of 1993 was located in that corner of the West Wing?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. That would be directly below the Office of the White House Counsel?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Then, if you were to take a right exiting the White House Chief of Staff's Office and walk all the way down the hall, you would ultimately hit the Oval Office?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. Thank you. I think that does it for the schematic.

What was your understanding, by the way, in general terms of what Mr. Foster's responsibilities were as a Deputy White House Counsel?

Mr. HUBBELL. They had tremendous responsibilities. They provided legal advice to not only the President, but everyone else who was in the White House. I believe even the National Security Council's attorney is part of the White House Counsel's Office.

They would be the primary, I guess, General Counsel for the White House. For example, if there was a lawsuit against the Health Care Task Force, they would be the General Counsel for the White House in that case.

Mr. CHERTOFF. Now, when Mr. Foster was the Deputy White House Counsel, to your knowledge was he working on anything at the White House regarding Whitewater?

Mr. HUBBELL. I do know that Vince was assisting in the preparation of the Whitewater tax returns, and I assume as they also applied to the Clintons' personal tax returns.

Mr. CHERTOFF. How did you come to that knowledge?

Mr. HUBBELL. Vince told me.

Mr. CHERTOFF. When did he begin working on those tax returns?

Mr. HUBBELL. I really could not tell you that. I know it was sometime in the spring of 1993. I don't know when the Clintons filed those tax returns, but I knew sometime prior to the filing of the returns.

Mr. CHERTOFF. Do you know why he was selected to do that work?

Mr. HUBBELL. I think he had familiarity with some of the Clintons' personal financial situations. He was also working on some of their other disclosure forms. He obtained that work during the transition, and I think it was logical for him to continue to do so.

Mr. CHERTOFF. Now, was Mr. Foster a tax lawyer by training?

Mr. HUBBELL. No, he was not.

Mr. CHERTOFF. Moving backward in time now and directing your attention to the period of the campaign in 1992, what involvement

did Mr. Foster have, if any, at that period of time regarding information about Whitewater?

Mr. HUBBELL. With regard to Whitewater, I don't know that Vince had any. There were other issues that would come up with regard to the firm that Vince would assist the campaign and me in preparing answers for the media inquiries.

Mr. CHERTOFF. Did those questions include the McDougals or Madison Guaranty Savings & Loan?

Mr. HUBBELL. Yes, they did include the McDougals or Madison Guaranty Savings & Loan. That's why I'm trying to make a distinction. I don't recall Vince doing anything with regard to Whitewater, but he did with regard to Madison Savings & Loan.

Mr. CHERTOFF. What was Mr. Foster doing in 1992 at the Rose Law Firm regarding assisting the campaign concerning Madison Guaranty Savings & Loan?

Mr. HUBBELL. Questions—the campaign or the firm might receive questions from the media or inquiries from the media regarding Madison, and we might, for example, get a list of questions that are being asked. We would be asked to help provide answers to those questions.

Vince, I know in the case of Madison, helped me in assimilating the files and making the determinations of what we could tell the campaign and what we couldn't tell the campaign.

Mr. CHERTOFF. Now, were these questions originally generated, to your knowledge, by a number of press stories in the spring of 1992?

Mr. HUBBELL. Yes, they were.

Mr. CHERTOFF. Did Mrs. Clinton work with you and Mr. Foster in developing answers to those questions?

Mr. HUBBELL. Our contact with Mrs. Clinton was very limited because she was on the road quite a bit, so it was primarily working with the campaign.

Mr. CHERTOFF. With whom did you work at the campaign?

Mr. HUBBELL. Betsey Wright on this issue. There were other people who were working with Betsey, and I suspect many other people from time to time, but Betsey would be the primary person that we would work with.

Mr. CHERTOFF. Now, you indicated that part of what you and Mr. Foster were doing at this point in the campaign was assimilating and going through documents that had been collected at the firm. Were those all legal documents based on the firm's legal work or were they documents collected from outside sources?

Mr. HUBBELL. With regard to Madison, they were legal documents within the firm.

Mr. CHERTOFF. With regard to Whitewater?

Mr. HUBBELL. With regard to Whitewater, it was my understanding that other members of the firm had been assimilating things such as real estate records and things of that sort.

Mr. CHERTOFF. Were these internal firm real estate records or were they records that were obtained by going to outside sources?

Mr. HUBBELL. They were not internal of the firm. They were from going to outside sources, such as the county clerk where Whitewater was located.

Mr. CHERTOFF. So is it fair to say that members or employees of the firm were actually in the process of collecting information about Whitewater in order to furnish these answers?

Mr. HUBBELL. That's my understanding.

Mr. CHERTOFF. Now, what ultimately happened to these files that were used in the campaign and worked on by you and Mr. Foster after the campaign was over?

Mr. HUBBELL. They were ultimately delivered to David Kendall. Prior to that, I took possession of those files and had them for a considerable length of time.

Mr. CHERTOFF. Now, when you say "those files," to be clear, you mean all the files that the firm had retained?

Mr. HUBBELL. No, I'm sorry. Maybe it will help—there were files of the firm that remained at the firm. There were files—the files, though, that were being maintained at the campaign headquarters are the files that I'm saying I took possession of after the campaign and ultimately delivered to David Kendall.

Mr. CHERTOFF. Did those files also include references to Whitewater and Madison Guaranty Savings & Loan?

Mr. HUBBELL. Yes, they did.

Mr. CHERTOFF. Did you deliver them directly to Williams & Connolly?

Mr. HUBBELL. David Kendall and an employee of Williams & Connolly actually came to my home here in Washington and picked them up.

Mr. CHERTOFF. When was that?

Mr. HUBBELL. November 1993.

Mr. CHERTOFF. Is it fair to say that for almost a year after the campaign you kept the documents at your home?

Mr. HUBBELL. My home in Washington or my home in Little Rock, yes.

Mr. CHERTOFF. Why was that?

Mr. HUBBELL. The records I first took into my possession because the transition had not made a determination on where those records should be stowed, and we wanted to, to the extent some of the records had the attorney-client privilege protection, we wanted to maintain that ability, if necessary. There were lawsuits being filed against Betsey and others during the transition, so we wanted to maintain the privilege.

So, then, once we came here, the determination had to be made as to where were we going to store them. Then, the decision was made, bring them to Washington. Then, how do you get them here. We decided to wait until I moved and could bring them with me, and then I would get them to the Counsel for the President and First Lady.

Mr. CHERTOFF. Were all the documents that were transferred to you from the campaign attorney-client privileged documents? In other words, did you restrict the transfer just to the attorney-client privileged documents or were all the documents relating to Betsey Wright's work transferred over to you?

Mr. HUBBELL. All the records were transferred to me. I've never made an independent inventory of which are privileged and which are not.

Mr. CHERTOFF. Then they were again picked up in their entirety and sent over to Williams & Connolly?

Mr. HUBBELL. That's correct, except for a couple of files.

Mr. CHERTOFF. So the material that was sent to Williams & Connolly may, in fact, include documents that are not the subject of attorney-client privilege?

Mr. HUBBELL. I really have never made that determination, Mike, so I couldn't say one way or the other.

Mr. CHERTOFF. Now, at the end of 1992, were you aware of any steps being taken by the Clintons to wind up their investment in Whitewater?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. What do you know about that?

Mr. HUBBELL. I know that on a checklist of things to do, that Vince was working on and I worked on and other members of the transition worked on, one of the items was to end the relationship with the McDougals and Whitewater and try to get out of Whitewater.

Mr. CHERTOFF. Do you know whether that involved the sale of whatever ownership interest the Clintons had in Whitewater?

Mr. HUBBELL. I think ultimately that's how it was resolved, yes.

Mr. CHERTOFF. Apart from Mr. Foster, do you know anybody else who was involved in that transaction?

Mr. HUBBELL. I believe the person who was supposed to negotiate with the McDougals' lawyer was Mr. Jim Blair.

Mr. CHERTOFF. Who was Mr. Jim Blair?

Mr. HUBBELL. He is a close friend of the Clintons and is also General Counsel of Tyson Foods.

Mr. CHERTOFF. How long has he been General Counsel of Tyson Foods?

Mr. HUBBELL. For a number of years.

Mr. CHERTOFF. At the time that he was assisting in this process of transferring the ownership interest in Whitewater, was he involved also in the private practice of law?

Mr. HUBBELL. I really couldn't tell you about Jim's private practice. I believe he still maintained a private practice while he was General Counsel for a long time, because I was actually in some lawsuits involving Jim, but I couldn't tell you by 1992 whether he had totally eliminated his private practice or not.

Mr. CHERTOFF. Now, just to complete the picture of what we've been asking questions about in terms of documents at the firm, am I correct that there was a point in time a long while ago that Mr. Foster himself represented Mr. McDougal?

Mr. HUBBELL. A long time ago, back in the early 1980's, Mr. Foster was a counsel in a lawsuit where Mr. McDougal was one of the parties he represented.

Mr. CHERTOFF. Can you tell us what the nature of the lawsuit was?

Mr. HUBBELL. It involved the Bank of Kingston, Arkansas. Mr. McDougal was one of the owners, as well as others, and they were attempting to branch to the county seat in that county. The people who had sold the bank to Mr. McDougal were claiming that he had promised not to move a branch to the county seat.

Mr. CHERTOFF. Let me ask you whether the Rose Law Firm itself has ever represented either Madison Guaranty or Mr. and Mrs. McDougal?

Mr. HUBBELL. We represented Madison Guaranty for a period in the mid-1980's.

Mr. CHERTOFF. Who was the partner billing on that account?

Mr. HUBBELL. The billing partner was Hillary Clinton.

Mr. CHERTOFF. Was that a client she brought into the firm?

Mr. HUBBELL. She and an associate in the firm.

Mr. CHERTOFF. Did there come a point in time you stopped that representation?

Mr. HUBBELL. Yes. I believe that was in 1986.

Mr. CHERTOFF. Do you know why that was?

Mr. HUBBELL. I think there were several reasons. One, the work had not been as significant as anybody thought. We had started to pick up work for the FSLIC, and the FSLIC was telling us that they were going to take the position that we could have no representation of any savings and loan if we wanted to do work for the FSLIC. So one of the reasons that we discontinued——

Mr. CHERTOFF. Can we get the mike? I'm sorry, I don't want to cut your answer off. Maybe we can get another mike.

Mr. HUBBELL. One of the reasons we discontinued doing the work was because the firm was making a decision not to do any work for any S&L.

Mr. CHERTOFF. Finally, to complete the picture, was there ever a time that the Rose Law Firm represented Whitewater Development?

Mr. HUBBELL. I really can't answer that question. I know that one of my partners was doing some bankruptcy work in connection with that, but I don't know the nature of that work.

Mr. CHERTOFF. Did some of that work involve what you've previously described as trying to assemble the documents and clean up the mess of the late 1980's?

Mr. HUBBELL. What I think one of the difficulties was, was that most of this land was being sold by contract for sale, where there wasn't a deed until the final payment was made. There was an attempt to try to determine what the status was of each of these contracts so that the owners would know who owed what and who had bought what and to clean up the titles, so to speak, of the various parcels of property.

Mr. CHERTOFF. Was there also a problem or a difficulty in obtaining the documentation relating to this particular business enterprise?

Mr. HUBBELL. My impression was that there was difficulty in obtaining the documentation, mainly because of Mr. McDougal's problems.

Mr. CHERTOFF. What problems were those?

Mr. HUBBELL. He had been indicted and he was also, as I understand it, at that time, and I really don't know this, he was drawing Social Security disability for depression.

Mr. CHERTOFF. Now, I'm going to just bring you up to the point in time of July 20. I know a number of other Senators will be wanting to ask you questions about that, so let me just bring you up

to July 20 and ask you how it was you learned that your friend Vincent Foster's body had been discovered?

Mr. HUBBELL. I was out to dinner with my wife, a very good friend of mine and my children when I was beeped. I had to carry a beeper at that time. I went to the phone and called the Justice Command Center, who I believe is who beeped me, but I'm not sure to this day. I was told by George Stephanopoulos that Vince's body had been found and that it was an apparent suicide.

Mr. CHERTOFF. Did you eventually make your way over to the house of Lisa Foster?

Mr. HUBBELL. Yes, I went home—I tried to go home to call George back to find out—I couldn't believe it, as you can imagine. So I went to try to get to a private phone. I'd forgotten my keys so I was locked out of my house, so I went next door and borrowed a phone to call George back. He told me that the Park Police were on their way to Lisa's house and for me to get there as soon as possible.

I reminded George that Vince's sister was right across the street from me and asked if anybody had contacted her. He said no, would I do that. I went across the street and Sheila was there, as well as Vince's sister, Sharon, so both sisters were there.

I had to tell them and then we all went to Lisa's house and I was there when the Park Police arrived.

Mr. CHERTOFF. I think the last question I'm going to ask you about this is, to bring you up to this stage in the events, were there a number of people at the White House who, during the course of the evening, came to Mrs. Foster's house?

Mr. HUBBELL. Yes, there were, including the President of the United States.

Mr. CHERTOFF. Apart from the President, can you tell us whom you remember from the senior White House staff that were in attendance in that period?

Mr. HUBBELL. David Watkins was there. I'm pretty sure Bruce Lindsey came. David Gergen came. Mack McLarty was there. Bill Kennedy came. I'm sure there were others. I mean—but I can't tell you to this day everybody who was there.

Mr. CHERTOFF. What was Mr. Watkins' position at that time?

Mr. HUBBELL. I think he was Head of Administration. I think he was in charge of all the day-to-day activities at the White House, including the building.

Mr. CHERTOFF. That finishes my questions, Mr. Chairman. Thank you very much.

The CHAIRMAN. Senator Sarbanes.

Senator KERRY. Mr. Chairman, a point of personal privilege before Senator Sarbanes begins, if I may. I've been sitting here, frankly, disturbed by the demonstration that took place here with the briefcase, which I believe runs counter to the spirit of these hearings for a number of reasons, Mr. Chairman. As a matter of personal privilege I would just like to say, Senator Murkowski held up a briefcase which, for whatever reasons, we were not aware was going to be here and, for whatever reasons, was made available on very short notice. That briefcase was held up in a very dramatic fashion to suggest that, when held like this, these pieces of yellow paper were somehow not visible to Mr. Nussbaum.

Now, I've just spent a moment looking back through the depositions, and there is nothing in the depositions that factually suggests that this is how the yellow paper was found or that this is how the briefcase was held or that this is the manner in which they might even have been visible.

In point of fact, the briefcase was down on the floor within reaching distance of the chair he was seated in, and he reached over and pulled out files. When those files were in there, you can't see any paper. When you pull the files out, the briefcase closes, essentially shut, like this. You can't see in it, I can't see in it, nobody could see in it. For Senator Murkowski to sit here suggesting that was a facsimile of what happened is just false, calculated to have attracted every camera in the room that turned toward that briefcase.

The testimony is that Mr. Neuwirth, several days later, saw what looked to be an empty briefcase leaning up against a wall, and at that point he turned it over in putting it into a box to send back to Mrs. Foster and only several pieces of paper fell out, not all of them. There is no evidence whatsoever that the paper lined both sides, as Mr. Murkowski has demonstrated it. There is no evidence that the paper was either in one side or the other. In point of fact, the depositions say that when Mr. Neuwirth looked in there after only several pieces fell out, he had to personally remove the other pieces, which were lodged underneath the centerfold piece of this briefcase. They wouldn't move until he brought them out physically by hand.

So I just think that it is a bad way to begin these hearings, with a summary that somehow suggests that the very note that everybody was looking for in order to find out what the explanation was for what happened and that every bit of testimony suggests they were struggling to find a note to give to Mrs. Foster, that all of the evidence is contrary to the demonstration that was put on here, and I think it is a calculated, inappropriate way to begin these hearings, and I think the record should show that.

The CHAIRMAN. I think the record should also show that what we're engaged in now is an attempt to characterize all of the facts. I don't think that was Senator Murkowski's purpose, nor do I think that we should attempt to characterize all of the facts without giving the witnesses who have given depositions an opportunity to state when they first saw whatever they saw and the manner in which they saw it.

Senator KERRY. That's what I agree with.

The CHAIRMAN. So I don't intend to respond because I think what we then do is the very thing we have, I think, carefully avoided during these 3 or 4 weeks of interviews. I would say for the press, and they are the people who know, neither Democrats nor Republicans have been leaking depositions, putting out information, or attempting to spin. I would like to continue in that vein.

Senator KERRY. Let me say, Senator, that I agree with you. I said in my opening that I thought you had well set the stage and I——

The CHAIRMAN. I hope we can and I'm sorry if there was any confusion. I understand. I didn't know when they received that bag. They told me sometime around dinner time, about 7 p.m. If you

check the records, you will find that apparently there were a number of calls, not only as it related to the Foster file, but in addition to some other matters that still had not been resolved. I think the good faith that has been demonstrated so overwhelmingly and so repeatedly would mitigate toward accepting that explanation.

Senator KERRY. I appreciate that. I simply say I know the Senator can't control another Senator's comments, but Senator Murkowski clearly put that in an argumentative presentational form that suggested that one could not help but have seen those papers.

The CHAIRMAN. Senator, I think there will be——

Senator KERRY. I really would like the witnesses to testify on this matter.

The CHAIRMAN. I don't want to move forward and begin to characterize other depositions that may be more supportive of one position or the other. I'm being very careful about that at this time. So why don't we move on and let's see how that line does develop, who saw what, when they saw it, and the like. But the Senator makes a point. We understand that. I think we've been doing pretty well and I would like to keep it moving in this vein of being cooperative and attempting to keep this in the vein of obtaining the facts, and that's what we've tried to do.

That's why I was so appreciative of Mr. Hubbell, because I think that in his depositions—and I've read them very carefully over the 2 days that he appeared—I think he has attempted, as most of the witnesses, the vast majority, to be honest, to give the facts as they saw them, to be reasonable people. I think Senator Simon mentioned, sometimes the same people at the same event will give different interpretations of what they saw, and in an honest endeavor. Ours is to determine what those facts are, so we'll attempt to proceed in that manner.

Senator DODD. Mr. Chairman, could I ask just one question about——

The CHAIRMAN. Certainly.

Senator DODD. I didn't hear all the evidence as to how the briefcase ended up in one particular Senator's possession. Did the Committee request that or did Senator Murkowski request it?

The CHAIRMAN. I understand that staff counsel requested that it be made available for the entire Committee, that it came down at about dinner time, about 7 p.m. is when—oh, it came down this morning. Did you receive it last evening?

Senator DODD. I'm just curious as to how evidence is going to be—we've made a request, as pointed out by Senator Faircloth, for the——

The CHAIRMAN. It came into counsel's possession last evening at or about 7 p.m. I did not see this——

Senator SARBANES. When was it requested?

The CHAIRMAN. I think it was requested, what, yesterday afternoon?

Mr. CHERTOFF. Can I answer?

The CHAIRMAN. Yes, certainly.

Mr. CHERTOFF. We've been requesting this for about a week, actually, both sides.

The CHAIRMAN. So, in other words, it was a request that came from both staffs?

Mr. CHERTOFF. I think Mr. Ben-Veniste will agree that we've been communicating with the Independent Counsel for about a week and not through any decision that they have indicated they didn't want to give it to us. We had just not been able to connect in getting it over here until—I think I saw it very late in the day yesterday.

Senator DODD. Was that the same time the requests were made for the polygraph information?

Mr. CHERTOFF. I don't know that they were made in the same calls, but I think over the same time period. We have been in contact, both of us, on a bipartisan basis, with Mr. Tuohey.

Senator DODD. You will appreciate our—one piece of evidence shows up, and I accept, in a sense, how this can happen. I hope it doesn't happen again. But where the request is made for polygraph information, we have not yet received that, the Committee as a whole has not. It's just a concern I have that if evidence like that is going to end up in the possession of one Senator without the others, you end up with a chaotic situation on your hands. I presume——

The CHAIRMAN. The Senator makes a good point, and, again, I point out that if we look at the totality, I think we have demonstrated a unique capacity to keep everybody totally informed and working together with no—not even ex parte requests. I'll make sure and certain that we continue to follow that policy.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Certainly.

Senator SARBANES. Mr. Chairman, I just want to close this out by noting that in the letter we sent to Mr. Starr on July 11, 1995, jointly by the two counsel, I'm just going to quote it now:

> We also understand that one or more persons working under the auspices of the Office of the Independent Counsel has administered a polygraph examination of Margaret Williams regarding matters relevant to the Special Committee's current inquiry. According to press reports, the polygraph examination indicated that Ms. Williams was not being deceptive when she stated that she did not remove documents or other materials from Mr. Foster's office on the night of July 20, 1993. We recognize that you may not wish to provide the report of the polygraph examiner to the Special Committee; however, we request that you provide us with the questions asked and the answers given, together with the expert's conclusion regarding truthfulness as to each.

I only make the point that the Independent Counsel seemed able to produce this briefcase that has been the source now of some discussion on both sides, but he's not yet produced to us this report on the polygraph examination.

The CHAIRMAN. Senator, let me propose a request that we get our staffs to prepare a letter for our signatures reiterating our request from the entire Committee.

Senator SARBANES. Fine.

Now, Mr. Chairman, I'd like to ask, will we go a half hour on this side and then conclude for today and go over until tomorrow? Is that your intention?

The CHAIRMAN. Mr. Hubbell, do you have any strong feelings one way or another? Because what the Chairman has been asked and what has been proposed is that there be another half hour of questions that they would put forth and that we put this over until to-

morrow when we would start with you immediately. Does that suit you?

Mr. HUBBELL. That's fine. I'm at the pleasure of the Committee.

The CHAIRMAN. Senator, why don't we do that, then.

Senator SARBANES. Mr. Hubbell, I want to put just a few questions to you and then I'm going to turn the balance of my time over to our counsel, Richard Ben-Veniste. At the end, Mr. Chertoff was getting to the scene at the family home, the Foster family home, on the night of July 20. I know it is difficult for you to go back over this and I understand that, but I think it's important for our inquiry and almost necessary that we do so. I know you understand that.

You say you went over to Vince Foster's home from across the street where his sister lived, having gone there first to tell his sister about it.

Mr. HUBBELL. Let me try to make it clear. Vince's sister Sheila lives across the street from my home.

Senator SARBANES. I'm sorry, from your home.

Mr. HUBBELL. I went over and told Sheila and Sharon what I thought had happened or what I had been told, and then we all got in our cars and drove to the Foster residence in Georgetown.

Senator SARBANES. Now, tell me the scene at the Foster residence when you arrived.

Mr. HUBBELL. When I arrived, the Park Policeman was there, as well as David Watkins, and they were about to enter the home. I believe that either David or I asked if we could tell Lisa. He said it was the function of the Park Police to tell her. So we stayed right outside the door as he knocked on the door and went in.

Senator SARBANES. He went in himself?

Mr. HUBBELL. Yes.

Senator SARBANES. You waited outside?

Mr. HUBBELL. We were—it happened very quickly, as you can imagine. The daughter, Laura, came to the door.

Senator SARBANES. How old is the daughter?

Mr. HUBBELL. Laura, I believe, at that time was 21 years old. Lisa came down the steps. He told Lisa. She screamed, as you can imagine, and sat down on the steps. At that point we all entered the home, that being David, my wife, myself, Marsha Scott, Sheila and Sharon. Pretty quickly other people started coming to the home.

Lisa went upstairs. Eileen, I believe, took her upstairs. Then, within a few minutes, Eileen asked that I go up and be with Lisa.

Senator SARBANES. Now, I take it it was a very traumatic scene.

Mr. HUBBELL. Senator, I've had some tough times in the last 2 years, but that was the worst day of my life. Trauma is not the way to describe it. We were in shock. We couldn't believe it. There was no way that Vince Foster—this could happen to Vince Foster.

So we were all blaming ourselves, we were guilty that we didn't—what could we have done to prevent this?

So it was—as I'm emotional now, you can imagine how we all were then.

Senator SARBANES. There's an allegation that's been made that you pushed a Park Police officer who was, I take it, he or she, it

may be a she, trying to talk to Mrs. Foster and that you pushed her out of the way. Could you enlighten us on that allegation?

Mr. HUBBELL. The first time I heard of that was last year when this Committee had its hearings and I saw the Park Policewoman say that I was rude to her. I do not remember the incident at all. I think, if you can tell by my size, if I shoved someone in that crowded room, somebody would have noticed, but I do know that others who said at some point, it was not Mrs. Foster, it was Mrs. Anthony that the Park Policewoman was trying to talk to, one of the——

Senator SARBANES. Vince Foster's sister?

Mr. HUBBELL. Vince Foster's sister. Someone came up to me and said the woman is—that woman is—I don't know what was said. I can just only report that they asked me to go and rescue Sheila, and I went over and took Sheila away.

If I was rude, I apologize, I really do, but I don't believe I shoved anybody that evening.

Senator SARBANES. You moved her away because she was in a very difficult emotional state, is that it?

Mr. HUBBELL. Yes. As I'm sure all of you unfortunately have been in circumstances where everybody is shocked and grieving, and one of the people told me that Sheila looked upset and frustrated like she was being cornered and they said go rescue Sheila.

Senator SARBANES. How many people would you say were in the home?

Mr. HUBBELL. Pretty soon—as you know, Mr. Foster's residence was not that small. They had a small living room.

Senator SARBANES. You mean not that large.

Mr. HUBBELL. Not that large. The room was full of people. We were wall-to-wall people that entire evening.

Senator SARBANES. Mrs. Foster was upstairs primarily?

Mr. HUBBELL. Primarily. She would come down to answer the phone and be consoled by others, but she went up and down the stairs, yes.

Senator SARBANES. Richard.

Mr. BEN-VENISTE. Mr. Hubbell, before I continue on with the chronology of events that occurred on July 20, 1993, I want to bring to closure one point that Mr. Chertoff was questioning you about. With respect to the 1992 campaign files, including materials that included inquiries and other materials about the Whitewater matter, it is your recollection that you had those materials in your possession through 1993, November, until you delivered those materials to Williams & Connolly or an authorized representative of that firm; is that correct, sir?

Mr. HUBBELL. That is correct.

Mr. BEN-VENISTE. So you know for a fact that Vincent Foster did not have those files in his office?

Mr. HUBBELL. The campaign files that I had, Vince never had, that is correct.

Mr. BEN-VENISTE. Now, with respect to the evening of July 20, 1993, you were in the presence of the Park Police who were in the Foster home following their notification of Mrs. Foster; correct?

Mr. HUBBELL. That is correct.

Mr. BEN-VENISTE. At any time did the Park Police, to your recollection, request that they be allowed to search the home for any note or other thing?

Mr. HUBBELL. No, they did not, to the best of my recollection. I recall asking them if they had to stay. They said they wanted to ask Mrs. Foster a few questions if she was able to do so and did we object to them staying, and of course not. I think, at some point, one of the Park Policemen did talk to Lisa briefly and then at some point they left.

Mr. BEN-VENISTE. She was in a considerable state of emotional distress; is that so?

Mr. HUBBELL. Absolutely. Senator Pryor had come and was trying to get his family physician there so we could have a doctor there to watch over Lisa that evening.

Mr. BEN-VENISTE. The Park Police made no suggestion that the Foster home should be sealed or posted or in some way guarded in connection with any search they might want to make at some future time; is that correct?

Mr. HUBBELL. That's correct. At least to the best of my knowledge they never made that request to me or the Foster family.

Mr. BEN-VENISTE. Was it clear from the Park Police that no note had been found at the scene of Mr. Foster's death?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Did you at some point yourself, together with Mrs. Foster, see whether Mr. Foster had left a note in the home?

Mr. HUBBELL. At some time that evening, Lisa and I searched to see if there was a note somewhere in the house, yes, we did. We did not find a note.

Mr. BEN-VENISTE. Now, you were present the next day helping Lisa Foster with a number of arrangements that had to be made; is that correct?

Mr. HUBBELL. That's correct, that evening and then the next day.

Mr. BEN-VENISTE. Did at any time the Park Police come back and say that they wished to search the Foster home for a note?

Mr. HUBBELL. Not to my knowledge, sir.

Mr. BEN-VENISTE. Now, did any Park Police officer in your presence on the night of July 20 make any request that Mr. Foster's office be locked or secured or sealed or posted or any such thing?

Mr. HUBBELL. The Park Police?

Mr. BEN-VENISTE. Yes, sir.

Mr. HUBBELL. No, not to my knowledge.

Mr. BEN-VENISTE. Did it occur to you at some point that it might be a good idea to ensure that the office was locked?

Mr. HUBBELL. Yes, it did.

Mr. BEN-VENISTE. Why was that, sir?

Mr. HUBBELL. I thought about this a lot. I was concerned that—my primary concern was that cleaning people might come in inadvertently, empty the trash and remove something out of the office that might be a note or some indication of what happened that day.

So I thought the office should be locked.

Mr. BEN-VENISTE. Did you, sir, have any concern that anyone from the White House Counsel's Office or the White House might come into Mr. Foster's office to remove any files or documents?

Mr. HUBBELL. No, that was not what was on my mind.

Mr. BEN-VENISTE. You attended Mr. Foster's funeral, of course, in Little Rock?

Mr. HUBBELL. Yes, I did.

Mr. BEN-VENISTE. When you returned from the funeral, did you have a conversation with Mr. Heymann about whether it would be a good idea if you personally distanced yourself from any investigation surrounding Mr. Foster's death?

Mr. HUBBELL. Yes, I did. I believe it was when I returned. I think that's the most logical time that we had that conversation, and Phil said he was going to try to keep me out of it. We agreed that although I wanted to know what was going on because I wanted to know about my friend, that I would not be in any way involved in the investigation.

Mr. BEN-VENISTE. Was that simply because, as Mr. Heymann and you recognized, that you were too close to Mr. Foster rather than from any ethical or other legal restriction that would have prohibited you from being involved in some way?

Mr. HUBBELL. That's correct. Phil said there's no reason for you to recuse but you just—you're too close. I agreed that I was too close, although—and so I was lucky to have a Phil Heymann there, that I wasn't required to take any official action and that he was comfortable enough with me that if I felt like something was wrong, that I was expressing it in a human term and as in a friend's term and not in any official capacity.

Mr. BEN-VENISTE. Let me focus you on the morning of July 21, the day after Mr. Foster's suicide. Did you attend a briefing by the Park Police at the White House?

Mr. HUBBELL. Yes, I did.

Mr. BEN-VENISTE. At that time was there any indication about who would assume responsibility for coordinating with the investigative authorities from the White House?

Mr. HUBBELL. I think at the close of that meeting, they were asked who would and Mr. Nussbaum said that he would.

Mr. BEN-VENISTE. Now, did you have a conversation with Mr. Nussbaum about whether you thought it was judicious or appropriate or practical for Mr. Nussbaum to be the person who would play that role?

Mr. HUBBELL. Yes, I did. It was a very brief conversation. As we were exiting the office, I told Bernie I thought he ought to think about staying out of this.

Mr. BEN-VENISTE. What was your reasoning?

Mr. HUBBELL. I wanted him to at least think about it. I know how I was feeling at the time. I knew that there had been issues regarding the Travel Office and whether there should be an Independent Counsel to represent the White House with regard to the Travel Office investigation. Too often you tend to go forward and act without thinking, and I wanted Bernie to at least just plant the seed, Bernie, think about whether you should be involved or not.

Mr. BEN-VENISTE. What was Mr. Nussbaum's reaction?

Mr. HUBBELL. I think his words were, "Really. I'd like to talk to you about that."

Events consumed us after that point.

Mr. BEN-VENISTE. Did he seem surprised that you made that suggestion?

Mr. HUBBELL. He did, but I think it was just, oh, OK, and it did plant the seed. I don't know what his thought process was after that point.

Mr. BEN-VENISTE. Up until this point, how long had you known Bernie Nussbaum?

Mr. HUBBELL. I began to know Bernie in December 1993.

Mr. BEN-VENISTE. Did you get to the point where you felt that you knew him pretty well?

Mr. HUBBELL. I'm sorry, it's 1992 that I—did I get to know him pretty well? Yes, I did.

Mr. BEN-VENISTE. Would you tell us something about Mr. Nussbaum's personality with respect to issues of making decisions or problem solving.

Mr. HUBBELL. I have great respect for Bernie Nussbaum and his legal abilities, I really do. Bernie is one that will jump in there with both feet immediately, and that's Bernie's personality, and that's why occasionally friends of Bernie's would say, think about this.

Bernie is very receptive and open, but sometimes you talk to Bernie as a friend and say don't jump in there just yet. Think about it. But Bernie is very open. I have great respect for his legal abilities.

Mr. BEN-VENISTE. It has been said if Bernie Nussbaum was within 10 feet of a problem, he would want to go over and snatch it and solve it.

Mr. HUBBELL. That's exactly right.

Mr. BEN-VENISTE. Did there come a time when you had a conversation with Phil Heymann, the Deputy Attorney General of the United States, with regard to his view of Mr. Nussbaum's involvement in coordinating law enforcement efforts?

Mr. HUBBELL. Yes, I did. I believe upon my return from Little Rock, Phil and I talked about the previous week.

Mr. BEN-VENISTE. Tell us, if you would, what the substance of your conversation with Mr. Nussbaum was at that time.

Mr. HUBBELL. Mr. Heymann, I believe.

Mr. BEN-VENISTE. Mr. Heymann, I'm sorry.

Mr. HUBBELL. He told me that they had some difficulty with regard to the review of the documents in Bernie's office, that he had received a complaint from the Department of Interior and that he had to talk to Bernie, but that everything was OK. I had asked him did I need to talk to Bernie. He said no, everything is OK.

Mr. BEN-VENISTE. Let me back up a moment and get the time sequence involved. The review of documents in Mr. Foster's office occurred on July 22, 1993?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. The funeral was on July 23, 1993?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Your conversation with Mr. Heymann was sometime shortly after you got back to Washington?

Mr. HUBBELL. I'm sure of that, because I left on the 22nd with Bernie to go home. So it was at some time—I believe I got back Monday night, so it's likely that Tuesday I talked to Phil for the first time.

Mr. BEN-VENISTE. In his conversation with you, did Mr. Heymann characterize the type of position that Bernie Nussbaum had taken vis-a-vis whether the Park Police could personally look through the documents in Mr. Foster's office?

Mr. HUBBELL. Yes, he did. He described Bernie as putting his aggressive litigation hat on and that the Park Police were having difficulty with that, and that Phil had to talk to Bernie about it and resolve the issue.

Mr. BEN-VENISTE. Did Mr. Heymann indicate to you whether or not he believed that Mr. Nussbaum had interfered with the investigation?

Mr. HUBBELL. No, he did not say that.

Mr. BEN-VENISTE. In his conversation with you where he had advised you that it wouldn't be necessary for you to talk to Mr. Nussbaum, you got the impression that he thought things had settled down and were straightened out?

Mr. HUBBELL. That's correct. He said, specifically, "I've taken care of it."

Mr. BEN-VENISTE. Now, you mentioned Mr. Collier, who was at the time a Chief of Staff to the Secretary of the Interior, who would have supervised the Park Police.

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Was this another Administration official in addition to yourself, meaning Mr. Collier, who had a view about whether Mr. Nussbaum was too close to Mr. Foster?

Mr. HUBBELL. I really don't know that. I know Mr. Collier, know him better now than I did at that time, so I don't know what Tom's views are.

Mr. BEN-VENISTE. But at this point, to bring closure to the issue, you got the impression that Mr. Heymann had heard from Mr. Collier, who had expressed a view similar to yours, and that Mr. Heymann was of the view that the matter had been resolved and things were working out?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. With respect to the question of whether Mr. Heymann specifically advised you about whether he thought Mr. Nussbaum had interfered, I want to read from your deposition transcript at page 117, line 6.

Question: Did he feel, meaning Mr. Heymann, as if Mr. Nussbaum had interfered with the Justice Department's efforts?

Answer: No, he didn't. He, in fact, said specifically he did not think that he had interfered but that other people were upset about it and that he thought it could lead to problems and he had to talk to Bernie about it.

Mr. HUBBELL. I believe that's true, and I hope what I said today is consistent with that.

Mr. BEN-VENISTE. That clarifies it, sir. I see that my time is about expired and, having our injunction about finishing up with these questions for this afternoon, I won't go into another area.

The CHAIRMAN. Mr. Chairman, I think this is a good time to—Members of the Committee, I'm used to calling you Mr. Chairman for a long time. I thought I'd have to call you Mr. Chairman for a long time.

I think this is a good time to recess. We will take up our Committee hearings tomorrow starting with this line of questioning,

and I think we have a number of questions to put to you, Mr. Hubbell. I want to again thank you for your testimony.

We will resume tomorrow at 9:30 a.m. The Committee stands in recess.

[Whereupon, at 1:04 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Wednesday, July 19, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

7. Wastewater

Redacted

Systems:

EN – cert w. access but not documented yet

1000 gpm

Cattaraugus

Utica

Finn Alyons

DKSN000229

3) [illegible] + deductions

-$5800 — sold $1000 for nil

4) [illegible] is taking a loss
of $4800

5) [illegible] interest deduction of $4800 which
cannot be [illegible] with W/H

6) Non-compliance would result in an —
audit of many of [illegible]

— Cases where you should not [illegible] —

1) [illegible] of characterizing [illegible]
payments on student [illegible] [illegible] in Great
Southern Bank

2) property & claim with deduction for
debt which should be [illegible]

Prior

3) Deduction of $4800 prior [illegible]
in 1990

— Idle concept of having to [illegible]
[illegible] a rebate

DKSN00023E

Where

Sometimes related to Clinton's return guarantees

Don't want to go back into that box

Then MID begins to circumvent barriers -

[illegible]

Summary

Re:

[illegible]

[illegible]

[illegible]

[illegible]

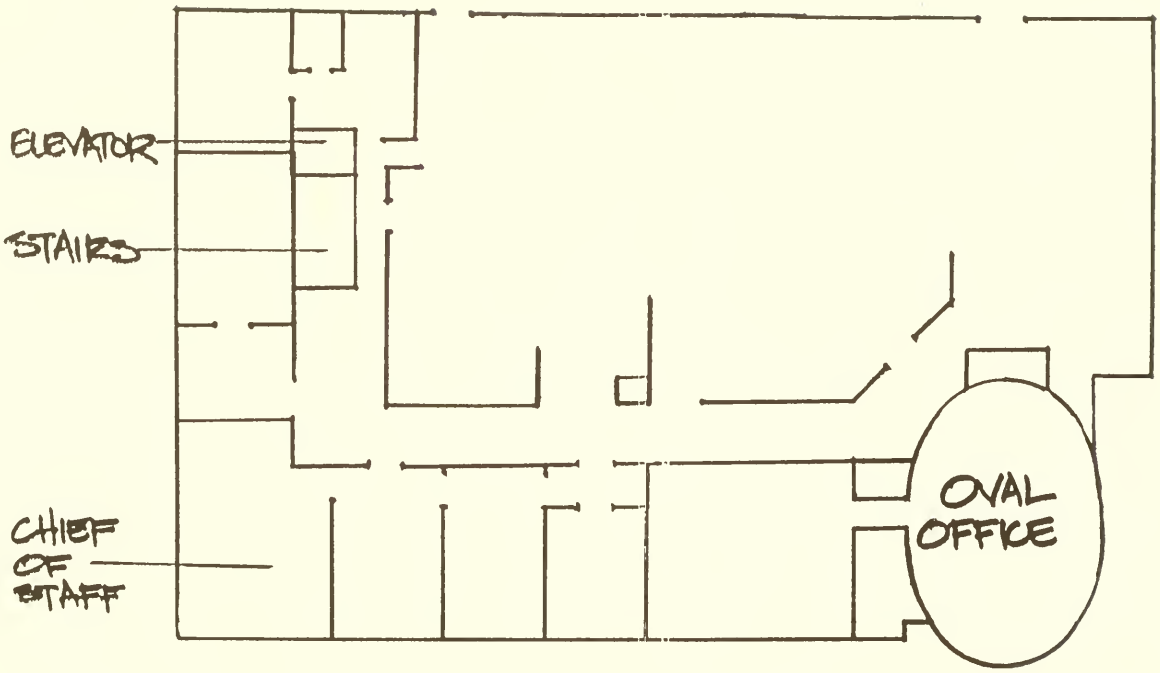
[illegible]

[illegible]

Redacted

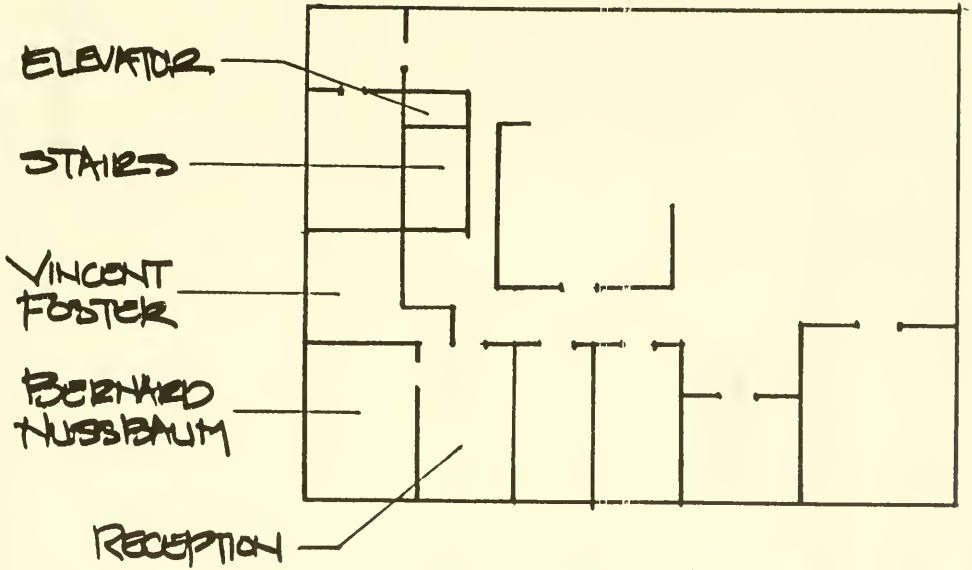
→ Get out of drinking water

DKSN000087



THE WHITE HOUSE

WEST WING - FIRST FLOOR



THE WHITE HOUSE

WEST WING - SECOND FLOOR

3. Whitewater

Redacted

M E M O R A N D U M

TO: Betsey Wright, Jim Hamilton, Jim Lyons

FROM: Jonathan Foster CONFIDENTIAL

DATE: April 28, 1992

RE: Amended and Restated State Disclosure Form

Redacted

3. I have not included Whitewater as an asset because the Clintons' investment in Whitewater is worth less that $1,000 (and was during 1991). Keep in mind that Whitewater was

listed on the January filing. Unlike the $1,000 honorarium mentioned above, however, it seems worthwhile to omit Whitewater even if doing so raises a few questions.

Redacted

10 options

$1000 basis so no tax effect

but arbitrary & still risks audit

vs

0 basis w/ $1000 gain

avoids any audit issue

~~Option~~

In Rocker's view no significant difference in amounts Qs for

$4000 loss

no loss

$1000 gain

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, JULY 19, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. Yesterday we were not able to conclude our examination and the inquiries that were being put forth to Mr. Hubbell. It was the decision of the Committee to put over the rest of the questioning from our colleagues until today. We thank Mr. Hubbell for being with us again and I will turn to Senator Shelby for the questions that he is going to put forth.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Hubbell, yesterday we left off talking about a conversation that you apparently had had with Phil Heymann who, just to put it back in the record, was the Deputy Attorney General over at the Justice Department at that time; is that correct?

CONTINUED SWORN TESTIMONY OF WEBSTER HUBBELL FORMER ASSOCIATE ATTORNEY GENERAL U.S. DEPARTMENT OF JUSTICE

Mr. HUBBELL. That is correct.

Senator SHELBY. We were trying to get into the record about some of the difficulties that Mr. Heymann apparently had with Mr. Nussbaum, who's the White House Counsel, over how the search of Vince Foster's office was conducted or was to be conducted. Would you just, for the record this morning, tell us again what was the difficulty that Mr. Heymann had with Mr. Nussbaum's attitude about searching the office of the White House Deputy Counsel?

Mr. HUBBELL. Obviously, Mr. Heymann is the one who did this because I was in Little Rock at the time, but what he related to me was that any——

Senator SHELBY. When you got back over to the Justice Department is when he related to you this?

Mr. HUBBELL. That's correct.

Senator SHELBY. At that time, you were the number three person at the Justice Department?

Mr. HUBBELL. That's correct. What he had told me is he and Bernie had had some discussions about how the review of the files would occur. Then, when, I believe, the Park Police, FBI agents and several people from the Justice Department were there, that Bernie had wanted to go about it in a different way.

Senator SHELBY. What did Mr. Heymann say to you about Nussbaum's idea of searching the office? Obviously, this was the crux of the conversation.

Mr. HUBBELL. The crux of the conversation was actually that the Park Police had complained about the procedure and that he had to talk to Bernie about it to get it resolved.

Senator SHELBY. The Park Police, who were doing the initial investigation of the death of Mr. Foster and so forth, had complained to the Justice Department?

Mr. HUBBELL. Actually, they had complained through Tom Collier, who was the Chief of Staff for Secretary Babbitt.

Senator SHELBY. Through the Department of the Interior. But it had made its way to the Justice Department up as far as the Deputy Attorney General of the United States, had it not?

Mr. HUBBELL. Yes, I believe Mr. Collier called Phil, and then Phil called Bernie.

Senator SHELBY. In other words, the Park Police were concerned about not being able to do their job, as far as they saw it, at the White House with the White House Deputy Counsel's Office?

Mr. HUBBELL. Senator, I really don't know what the Park Police said to Tom, who said to Phil——

Senator SHELBY. But you do know what Mr. Heymann said to you?

Mr. HUBBELL. I do, and that's what I'm trying to relate to you.

Senator SHELBY. You go ahead and relate it.

Mr. HUBBELL. That they were concerned about the way the search of the files—I don't believe there was any question about the search of the office. I think we're talking about the files and how that was being done, that they would rather do it in a different manner.

Senator SHELBY. In what different manner?

Mr. HUBBELL. I really don't know what the initial agreement was, Senator. I really don't.

Senator SHELBY. But you do know there was an initial agreement and then it was changed apparently; is that right?

Mr. HUBBELL. That's my understanding from what Phil told me.

Senator SHELBY. But you were not party to that, and you weren't privy to all of it?

Mr. HUBBELL. No, I was not. I was in Little Rock, Senator.

Senator SHELBY. Was it your impression from talking to Mr. Heymann over at the Justice Department that Mr. Heymann felt that the Department of Justice initially had an understanding with Mr. Nussbaum, the White House Counsel, about how the search would be conducted?

Mr. HUBBELL. That's correct.

Senator SHELBY. Did he relate to you in any way his concerns about Mr. Nussbaum changing the understanding?

Mr. HUBBELL. He related to me that the understanding had changed, and that concerns were raised to him and that's why he needed to talk to Bernie to get it fixed and resolved. He knew Bernie Nussbaum very well.

Senator SHELBY. Did you ever hear Mr. Heymann say something to the effect that Mr. Nussbaum had an aggressive litigator stance regarding this?

Mr. HUBBELL. That was my impression. I don't remember the exact words, but the impression I had was Bernie had his aggressive litigator hat on.

Senator SHELBY. What would you surmise from that kind of a phrase?

Mr. HUBBELL. I'm a Southern litigator, and I'm familiar with New York litigators versus Southern litigators, and I viewed that Bernie had his New York litigator hat on, no offense to anybody from New York, Senator and Chairman.

Senator SHELBY. Is that what you would call a very aggressive stance?

The CHAIRMAN. Mr. Hubbell, let me ask you, have I been aggressive so far?

Mr. HUBBELL. No, Senator.

Senator BOND. Mr. Chairman, the Senator from Alabama and I understand exactly what Mr. Hubbell means.

[Laughter.]

Some of us have had it explained to us before.

The CHAIRMAN. The Senator from California continues to remind me of our New York connection.

Senator BOXER. Mr. Chairman, may I correct you, Brooklyn.

The CHAIRMAN. That is part of it.

Senator BOXER. I understand.

Senator SHELBY. Mr. Hubbell, I believe you also stated yesterday in light of the Travel Office incident that you felt that the White House Counsel's Office should stay out of the investigation of Vince Foster's death, and that you told Bernie Nussbaum this or words to that effect.

Mr. HUBBELL. I believe I told Bernie that——

Senator SHELBY. Just tell us what you told him.

Mr. HUBBELL. I believe—and it was a very short conversation—we were all in David Watkins' office. We had heard the report from the Park Police. Everybody was leaving, and I said something to the effect that Bernie——

Senator SHELBY. Where was David Watkins' office?

Mr. HUBBELL. It's on the first floor of the West Wing.

Senator SHELBY. Of the White House?

Mr. HUBBELL. Of the White House, yes. There were a lot of people all exiting, and I said Bernie, can I talk to you for a second? I really think you ought to think about staying out of this, or words to that effect. I mean, it's been 2 years, and so that's what I said. I didn't mention the Travel Office, I don't believe.

Senator SHELBY. You didn't refer to it, allude to it or anything?

Mr. HUBBELL. I don't believe so, but I could have.

Senator SHELBY. But you could have?

Mr. HUBBELL. I could have said just about anything in that period of time and those days and not remember it.

Senator SHELBY. Sure. Mr. Hubbell, do you have an opinion or do you know—that would be better—do you know why Bernie Nussbaum didn't want the Department of Justice to conduct a search and review the contents in Vince Foster's office?

Mr. HUBBELL. I certainly don't know that, and that's not what I understand. They did conduct a review of the files. It was just done in a way that was not the initial agreement with Phil, and I'm not here to defend Bernie one way or the other.

Senator SHELBY. I understand.

Mr. HUBBELL. I know Bernie pretty well. He can speak for himself.

Senator SHELBY. He can defend himself, can't he?

Mr. HUBBELL. But the one thing that comes to my mind is that I had the benefit of having a Phil Heymann who could take over anything I couldn't do. Bernie was by himself to a large extent, and the time constraints were not the same as you would probably like in this type of situation. I'm not trying to defend Bernie. Bernie, I'm sure—I know Bernie, you all know Bernie—will speak for himself. But the one factor that comes to mind of why Bernie didn't stay completely out of it would be the time factor.

Senator SHELBY. Mr. Hubbell, why would anyone try to put up barriers to searching or looking through an office by law enforcement people unless they had something to hide?

Mr. HUBBELL. I know——

Senator SHELBY. In other words, if you have nothing to hide, why wouldn't you say look, we have nothing to hide, you come on in, instead of trying to put up barriers?

Mr. HUBBELL. There were files in my office, Senator, that had national security issues, had attorney-client issues, and if I had committed suicide, I'm sure the Attorney General would have been reluctant to share those with law enforcement people until there had been a review.

Senator SHELBY. But in this case it was not the Attorney General. The Department of Justice thought they had an agreement with the White House Counsel to go in there. Probably what they should have done is had a search warrant issued by a magistrate from hour one, and there would have been no problem, would there?

Mr. HUBBELL. I believe that if there was a search warrant, there would still be national security and attorney-client issues. But, again, Mr. Nussbaum can speak to this. I'm speculating on what his concerns were.

Senator SHELBY. Let me ask you this, Mr. Hubbell: The Department of Justice, where you were the number three person, had Janet Reno, Attorney General. You had Philip Heymann, Deputy Attorney General, and you as the number three person. But don't the Department of Justice lawyers have security clearances?

Mr. HUBBELL. Some of us do. Some of us do not.

Senator SHELBY. You could send the proper ones over there to look at the ones—I mean, you would know quickly who had secu-

rity clearances and would be able to go in and look at anything, wouldn't you?

Mr. HUBBELL. If it were me, I believe I had the security clearance to look at those files, yes.

Senator SHELBY. So you could—if you hadn't recused yourself, you would have been the proper person to go over there?

Mr. HUBBELL. No, I don't believe I was the proper person to go over there.

Senator SHELBY. If you had not had the close relationship, you could have done that?

Mr. HUBBELL. I could have been one, yes.

Senator SHELBY. According to your testimony also, Mr. Hubbell, Mr. Heymann, I believe, told you that he felt that he had communicated his concerns to Mr. Nussbaum and that everything was worked out. In other words, they had reached an agreement that it was unnecessary to follow up with a call; is that correct?

Mr. HUBBELL. That is correct.

Senator SHELBY. When did this conversation take place?

Mr. HUBBELL. I believe it was the Tuesday when I returned, probably the 25th.

Senator SHELBY. Was this before or after the note was disclosed to the Department of Justice and the Park Police?

Mr. HUBBELL. I do not know when the note was disclosed to the Park Police or Justice. I only know when I found out about it, which was later.

Senator SHELBY. Do you know if there was any renewed concern or difficulty expressed by anyone at the Department of Justice or Phil Heymann, who was over there at Justice, over the White House delay in releasing the note to law enforcement officials?

Mr. HUBBELL. The only thing I recall was articles in the press about it, but I was not made aware of the note until it made the press.

Senator SHELBY. Why would they delay the release of something like that that was central to this investigation?

Mr. HUBBELL. I really don't know, Senator. I believe I read they were trying to locate Mrs. Foster and advise her of the note.

Senator SHELBY. I believe you also testified, Mr. Hubbell, that you asked him—you were talking about Heymann—Mr. Heymann, if he thought that Mr. Nussbaum was interfering with the investigation, and he said that he didn't think so, but that there were concerns, and that could lead to problems. I believe they were the words or similar to that?

Mr. HUBBELL. Words similar to that. I don't believe I asked him if he thought Bernie was interfering. I think he told me that he thought Bernie was not interfering, but others had concerns.

Senator SHELBY. It could lead to problems, in other words, in what he was doing?

Mr. HUBBELL. That's correct.

Senator SHELBY. It did, didn't it?

Mr. HUBBELL. He talked to Bernie, and he said he had worked it out.

Senator SHELBY. Were you made aware at that time of any other concerns or problems being raised by other law enforcement officials other than the Department of Justice? In other words, did he

tell you anything about how the Park Police, Mr. Hubbell, viewed the White House Counsel's conduct under this? Didn't Mr. Heymann tell you about a conversation he had with Tom Collier, the Chief of Staff of the Secretary of the Interior, about the White House's conduct in the investigation?

Mr. HUBBELL. Yes. Specifically, the conversation was brought on by the fact that Mr. Collier had called him to say that the Park Police had concerns.

Senator SHELBY. My time is up on this round.

The CHAIRMAN. Senator Sarbanes, we will attempt to keep as close as we can. I will give some latitude to either side as it relates to finishing a question or a particular line, and hopefully we can work that out so we have a continuity.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you, Mr. Chairman. I'm sure that some of our Members will probably run over their time in the questioning, but we will make an effort to hold to the allotted time.

The CHAIRMAN. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you very much, Mr. Chairman.

Mr. Hubbell, let me join Senator D'Amato in thanking you for being here and being as forthright and candid and open as you've been. We appreciate it immensely here on the Committee. I'm going to ask you a few very direct questions, and then I'm going to turn whatever time, Mr. Chairman, I have remaining of my slot over to Mr. Ben-Veniste to continue with his line of questioning.

First of all, I think, just to review the bidding a bit here, what we're talking about here is a police inquiry into a suicide on July 20, 21, 22, 1993, and thereafter. This was not a police inquiry into Whitewater, Madison Guaranty, or anything else of the kind. This was a police inquiry, a Park Police inquiry into the office of a person who has tragically taken his life to determine, I would suspect, whether or not there's any suicide note or any evidence which would shed any light as to the rationale or reason why that individual had taken that action.

So, as we discuss the events around July 20, 21, 22, 1993, and thereafter, I think it's very important to keep in mind exactly what we're talking about here, what the interests of the policing authorities were, and that was to inquire as to whether or not there was any evidence as it relates to the tragic suicide of Mr. Foster. That's what this is all about. So, to the extent, all of a sudden, there was some reluctance to virtually open up the file drawers and every file cabinet in Mr. Foster's office to allow the Park Police or others to go through it to determine whether or not there was any evidence there is, I think, stretching the case a little bit.

But let me come back to the particular series of questions, and, Mr. Chairman, my intention would be to ask all of our relevant witnesses these same questions, and they go to the very heart, Mr. Hubbell, of what we're about in this session, in this series of hearings, the second part of these hearings on the Whitewater matter.

Mr. Hubbell, on or after July 20, 1993, the date, obviously, of Vincent Foster's suicide, did anyone ask you or instruct you to destroy any documents from Vincent Foster's office?

Mr. HUBBELL. No, Senator.

Senator DODD. Did you destroy any documents on or after July 20, 1993 in Vincent Foster's office?

Mr. HUBBELL. No, I did not.

Senator DODD. On or after July 20, 1993, did anyone ask you or instruct you to conceal from any law enforcement agency documents from Vincent Foster's office?

Mr. HUBBELL. No, they did not.

Senator DODD. Mr. Hubbell, did anyone at any time ask you or instruct you to take any action to impede, obstruct, or otherwise interfere with any policing investigation regarding Vincent Foster's suicide?

Mr. HUBBELL. No, they did not.

Senator DODD. I thank you.

Mr. BEN-VENISTE. Mr. Hubbell, I'd like to follow up briefly on questions Senator Shelby raised just a few moments ago. When Mr. Heymann told you, in words or substance, that Mr. Nussbaum had put on his New York litigator hat, what did that mean to you?

Mr. HUBBELL. I don't know if we want to get into a debate of Southern litigators versus New York litigators, but Southern litigators, I think, try to charm their opponents and New York litigators try to play a little harder ball, and that's the view I had.

Mr. BEN-VENISTE. It seemed pretty clear with respect to the FBI, the Department of Justice and the Park Police that Mr. Nussbaum's batting average on the charm scene was not very high?

Mr. HUBBELL. That's correct. It takes a little while to love Bernie like I do now.

Mr. BEN-VENISTE. But there were, as you pointed out, very legitimate questions, very important questions of executive privilege and attorney-client privilege associated with the material in the Office of the Deputy Counsel to the President of the United States?

Mr. HUBBELL. I don't know what was in Vince's office to this day, other than pictures of his family, but I would assume in the Office of the Deputy White House Counsel there are documents that have very serious executive, attorney-client and national security issues.

Mr. BEN-VENISTE. Some of those involved, you would have expected, matters of deliberation of the President of the United States with his Counsel, such as on issues of confirmation of nominees and selection of nominees to the most important appointive offices in the land?

Mr. HUBBELL. I know that Vince worked on Supreme Court nominations, and there were files—I don't know whether they were in his office or not—regarding those potential nominees.

Mr. BEN-VENISTE. Is it correct that at the end of the conversation you had with Mr. Heymann, Mr. Heymann told you in response to your volunteering to intercede with Mr. Nussbaum, if Mr. Heymann thought it might be useful, that Mr. Heymann said no, it isn't necessary at this time. We've got it all worked out?

Mr. HUBBELL. That is correct.

Mr. BEN-VENISTE. Now, in addition to the important issues of executive privilege and attorney-client privilege, and in response to

Senator Shelby's question, why not just open the office up for the investigators to look through everything, do you feel that there was any issue with Bernie Nussbaum on the question of Mr. Foster's personal privacy in the immediate aftermath of his death?

Mr. HUBBELL. Again, Bernie can speak best about this, but I know that all of us were trying to be sensitive to the family's need for privacy at that very difficult time.

Mr. BEN-VENISTE. Finally, the issue of a search warrant was raised by Senator Shelby. Mr. Hubbell, can you conceive of any way that on July 21, 1993, any magistrate or other judicial officer could have reasonably issued a search warrant for the Office of the Deputy Counsel to the President on the facts then presented?

Mr. HUBBELL. You're asking for a legal opinion, and I'll give one, but I don't know what it's worth. I don't believe so.

Mr. BEN-VENISTE. Thank you, sir.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Senator Shelby, for purposes of concluding, and then we'll go to Senator Bond.

Senator SHELBY. There's just a couple of things I'd like to clarify.

If you're in the Justice Department, which you were at that time, and you had the FBI and the Park Police conducting an investigation, they're down at the White House, and the Counsel for the White House, the President of the United States, and Mr. Nussbaum is saying you can't go in that room, telling that to the Park Police and the FBI, who are doing their duties, wouldn't that lead a reasonable person to believe they're hiding something or they don't want you in there? Why couldn't you get a search warrant?

If I were a magistrate, I'd certainly—and I've been one—I would have issued one if the FBI would have come in and said look, they're blocking access to something, we don't know what's in there, but we have a right to look in there to complete our investigation. Yet the White House Counsel, Mr. Hubbell, is saying no, you can't go in there.

Wouldn't a reasonable approach have been let's go in there together and let's inventory each item, and if it came to something that had national security significance, the White House Counsel could say well, listen, we're not going to look at this right now, but this is item so-and-so. We're not going to remove it from the room. We're not going to take anything out of this room. We're going to secure this room with guards from the Park Police or the FBI. But that's not what happened because Mr. Nussbaum set out the rules initially with the Justice Department to how that office would be searched, and then he broke that because he had afterthoughts about it. Isn't that what happened, Mr. Hubbell?

Mr. HUBBELL. I really don't know what happened.

Senator SHELBY. But that's what a reasonable person would surmise, would they not?

Mr. HUBBELL. You asked what a reasonable person would do. I think——

Senator SHELBY. Let's say what Mr. Heymann would do. He's a top criminal lawyer, good reputation, Deputy Attorney General of the United States, and he had concerns about what was going on at the White House in the search of that office, did he not?

Mr. HUBBELL. Yes, and I think what I would do is get on the phone with Bernie and say Bernie, we need to talk about this.

Senator SHELBY. Why would you say you need to talk about it and why didn't you do it? In other words, the Justice Department is the Justice Department, the chief law enforcement officers of the United States of America reside in the Justice Department, Attorney General, Deputy Attorney General, but it was a political—see, this is part of the Clinton Administration—you've got the White House Counsel, you've got the Deputy Attorney General obviously in conflict over the search of the office. Who prevailed? The White House Counsel prevailed, held the FBI at bay. So we'll never know everything that was in that office, will we, Mr. Hubbell?

Mr. HUBBELL. I have a feeling through this hearing, you're going to find out what was in that office. But I really don't——

Senator SHELBY. We'll find out what was missing from the office.

Mr. HUBBELL. This, for me, is speculation because I do not know what happened. I wasn't there.

Senator SHELBY. I know that.

Mr. HUBBELL. All I heard was Phil say he had it worked out with Bernie.

Senator SHELBY. He had to go to Bernie to work it out.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Hubbell, yesterday in your response to questions from Mr. Chertoff and Mr. Ben-Veniste, you discussed going to the Foster residence the evening of the tragedy. You've indicated the emotional state that everyone was in. I believe we all understand that, and I apologize for going back over that, but there are just a couple of questions relating to that that I want to followup on.

Do you, from your own direct recollection, recall ever asking someone that evening to see that the White House office of Vince Foster be sealed?

Mr. HUBBELL. My own recollection, I don't have a recollection of saying lock or seal the office.

Senator BOND. But you were told by others their recollection that you did so indicate. Would you tell us who had that recollection of overhearing you and to whom you were reported to have made those recommendations?

Mr. HUBBELL. Both my wife and my friend Marsha Scott have told me that I told—and they don't remember exactly who, whether it was Mack McLarty or David Watkins that I said be sure the office is locked or sealed, or words to that effect.

Senator BOND. Did they tell you what the reaction of either Mr. McLarty or Mr. Watkins was to that request?

Mr. HUBBELL. It was that they would get that done.

Senator BOND. Is there any clarity in the view of those two companions of yours who said that they both—one thinks it's McLarty and one thinks it's Watkins?

Mr. HUBBELL. My wife believes that I told Mr. McLarty that. Ms. Scott believes that I told both Mr. Watkins and Mr. McLarty that sometime during the evening.

Senator BOND. Now, do both of them agree that there was an affirmative response from the person to whom you gave those directions?

Mr. HUBBELL. Yes.

Senator BOND. You also testified that this question of sealing the office kept you awake that night, among other things, in addition to the tragedy. Can you share with us why that concern bothered you during the night?

Mr. HUBBELL. I didn't sleep very well that night, as you can imagine.

Senator BOND. We can understand that.

Mr. HUBBELL. But one of the concerns I had was that somehow the cleaning people would go into that office and clean up the trash cans and maybe pick up notes that may have dropped on the floor and what a tragedy that would be for everybody to go in the office the next morning and the trash would be cleaned out and we wouldn't, at least, have the opportunity to see if there was something in the trash that would give insight into Vince's state of mind.

Senator BOND. Now, Mr. Hubbell, that was the first thing that came to your mind, and you testified to that yesterday, that you were concerned about the cleaning people. But, also, were there not other considerations as to why that office should be sealed?

Mr. HUBBELL. At the time that's what I was thinking about. Obviously, these hearings are about other considerations, but at the time I was thinking more of an inadvertent removal of something out of the office.

Senator BOND. Now, let me ask you in your professional position, you served as an attorney, a judge, a high-ranking official in the Justice Department. Stepping aside from the tragedy of your close friend, Mr. Foster, in your professional position, if you were called upon to supervise or to have influence over the handling of a scene where there had been a tragic death, not a natural death, of a high-ranking official, what would be the concerns that you would have about sealing the office of such an individual?

Mr. HUBBELL. One, something inadvertent being taken out of there that might give insight into Vince's state of mind.

Senator BOND. Two would be——

Mr. HUBBELL. The second would obviously be to try to make sure that we knew what Vince might have been working on to see if that would give any insight into what happened.

Senator BOND. What other considerations would you have generally, not speaking about Mr. Foster, but where there's a suicide or a violent death of a high Government official, what other concerns should a responsible prosecutor or lawyer or judge be concerned about preserving evidence——

Mr. HUBBELL. You would obviously want to see if there were personal records in there that might reflect, in the case of a violent death like this, that there was something amiss, something wrong happened.

Senator BOND. That could be—number one, it could be a question of whether it was murder or suicide. If it were suicide, there could be a question of whether there was a scandal, or whether there was

a breach of security or whether there was other foul play connected with that death. Is that a fair statement?

Mr. HUBBELL. That is correct.

Senator BOND. So these are the reasons that one would, in good legal practice—investigation of a crime scene—ensure that the office of the victim is sealed?

Mr. HUBBELL. Yes, except I would disagree. This was not a crime scene.

Senator BOND. Excuse me, strike that. I appreciate that. It's not a crime scene, but the office of a victim of a violent death should be secured. Now, you've indicated that documentation of the contents should proceed.

Could you describe for us what you mean by "documentation"? What should be done with the contents of an office under this——

Mr. HUBBELL. Again, Senator, I'm doing this out of speculation, and I have never personally been involved in a situation like this, and I hope none of us ever are again.

Senator BOND. We hope so.

Mr. HUBBELL. But I would think that there would be, at some point, some inventory of what was in the office, if possible.

Senator BOND. If you were representing a client in a civil or a criminal matter, and the opposing party, whether it be a prosecutor or a private party, wanted to get access to a whole office full of documents, and you might have various privileges to assert, you would, in your normal practice of law, make some accounting of those documents and develop a privilege log or something like that, would you not?

Mr. HUBBELL. In a perfect world, yes.

Senator BOND. But this would be good practice. You would develop a log of the information that was in the office or the site for which a subpoena had been served?

Mr. HUBBELL. If I had the time and the resources.

Senator BOND. If there were items in there that you felt might be within the scope of the request, but would be subject to a privilege, you would indicate a description of the document without the content and indicate that it was privileged?

Mr. HUBBELL. That's the way it's handled in a lot of civil litigation, yes, sir.

Senator BOND. Are you aware of any documentation made of the contents of Mr. Foster's office?

Mr. HUBBELL. Not one way or the other.

Senator BOND. Are you aware of any notes taken by the Associate White House Counsel and Mr. Foster's attorney after the death?

Mr. HUBBELL. Not one way or the other, Senator.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bond. We'll return to this side because we only have a minute left.

Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you, Mr. Chairman.

Mr. Hubbell, you were not really directly involved in any of the actual search for any files in Mr. Foster's office; correct?

Mr. HUBBELL. That's correct.

Senator KERRY. You, in effect, took yourself completely out of the investigation portion with respect to the office; correct?

Mr. HUBBELL. That's correct, Senator.

Senator KERRY. You issued no orders with respect to the search?

Mr. HUBBELL. I was acting as a family friend from the moment I heard of Vince's death, and I don't believe I issued any orders.

Senator KERRY. So, essentially, any questions that have been asked of you with respect to the search of the office, whatever you know, you only know as a secondhand matter; correct?

Mr. HUBBELL. Regarding Vince's office, that's correct.

Senator KERRY. Do you, as a matter of fact, now know that the Park Police succeeded in seeing each file that they wanted to see?

Mr. HUBBELL. I don't know one way or the other.

Senator KERRY. You have no knowledge whatsoever?

Mr. HUBBELL. I do not.

Senator KERRY. You can't shed any light on the central question that's on this Committee about the handling of the documents?

Mr. HUBBELL. That's correct.

Senator KERRY. Now, at some point prior to coming to Washington during the course of the campaign, you came to have possession of the so-called Whitewater files; correct?

Mr. HUBBELL. No, I don't know what people mean by Whitewater file.

Senator KERRY. You had a file that was built up in the course of the campaign to respond to questions during the campaign?

Mr. HUBBELL. I had a file that had been assimilated by the campaign that was labeled Whitewater, but I don't necessarily—and I'm sure that was not all the Whitewater files.

Senator KERRY. But whatever you had, were you the designated holder, in a sense, of the campaign's accrued information on this issue?

Mr. HUBBELL. That's correct.

Senator KERRY. It was an issue that was brought up several times during the course of the campaign and the campaign needed to respond?

Mr. HUBBELL. That's correct.

Senator KERRY. You were the central repository of that information?

Mr. HUBBELL. After the election, yes.

Senator KERRY. After the election you took that central repository and you put it in your home?

Mr. HUBBELL. That's correct.

Senator KERRY. After you put it in your home in Little Rock, at some point it came to be in your home in Washington?

Mr. HUBBELL. That is correct.

Senator KERRY. But it never went to the Justice Department?

Mr. HUBBELL. Never went to the Justice Department.

Senator KERRY. It never went to Vince Foster's office?

Mr. HUBBELL. No, it did not.

Senator KERRY. You never had a conversation with Vince Foster about the files that you had, did you?

Mr. HUBBELL. Vince was aware that I had the campaign files, but not what they were.

Senator KERRY. You never gave him any portion of them?

Mr. HUBBELL. No, I did not.

Senator KERRY. Did Vince ever call you and ask you a question about your files?

Mr. HUBBELL. No, Vince did not.

Senator KERRY. In effect, while you were the central repository of this information in the course of the campaign and retained all of the files from the campaign, which was about as heated and as intense a period of scrutiny as you could find, those files never found their way into Vince Foster's hands?

Mr. HUBBELL. That's correct.

Senator KERRY. Nor to the White House?

Mr. HUBBELL. Nor to the White House, except for one file that's not related to Whitewater in any way.

Senator KERRY. Now, it's my understanding—again, this is secondhand for you, it's secondhand for all of us, but with respect to the question Senator Shelby was asking, it's my understanding that the Park Police were not there to specifically look at a Whitewater file?

Mr. HUBBELL. I really don't know what they were there for. I would assume they were there to see if there was some kind of a note.

Senator KERRY. Correct. The note was the evidence, if you will, of the state of mind of Vince Foster at this moment; is that correct?

Mr. HUBBELL. You're talking about what——

Senator KERRY. You hoped?

Mr. HUBBELL. You hoped, yes. Everybody was looking for some idea of what was on Vince's mind.

Senator KERRY. That hope is what, in fact, elicited a fairly significant search for a note in the immediate intervening hours after notification of his death; correct?

Mr. HUBBELL. That's correct.

Senator KERRY. You, in fact, took significant steps to find that note, did you not?

Mr. HUBBELL. I looked with Lisa in the house that evening, yes.

Senator KERRY. So this is very important, I think. In the immediate aftermath, right after notification, Vince Foster's widow is now looking in her own house for a note?

Mr. HUBBELL. That's correct, with me.

Senator KERRY. Is it fair to say that at the White House and elsewhere, people were anxious to try to find a note?

Mr. HUBBELL. I don't know this for sure because a lot of things happened that night, but I believe I even asked people, did anybody find a note.

Senator KERRY. Have you read the note that was subsequently found?

Mr. HUBBELL. I have read a copy of the note. I've read the transcription of the note.

Senator KERRY. But you know the substance of that note?

Mr. HUBBELL. Yes, I do.

Senator KERRY. Is there anything in that note, now a matter of public knowledge, found several days later, that suggests to you there was a reason that someone might not have wanted that note found prior to that moment in time?

Mr. HUBBELL. No, Senator. I think it is the best insight we have into what was troubling Vince at the time.

Senator KERRY. Pretty straightforward, is it not?

Mr. HUBBELL. Yes, it is.

Senator KERRY. Did you have any further conversation with Bernie Nussbaum subsequent to the conversation that you've discussed here?

Mr. HUBBELL. No, I did not.

Senator KERRY. So you had no further contact with him, other than the one where you said you were out of it, out of the investigative process?

Mr. HUBBELL. That's correct. I mean, the only conversations I would have at that point with Bernie were grief conversations. Bernie and I were both pallbearers and I obviously saw Bernie at the funeral.

Senator KERRY. I wonder if you would share with us for a moment, so that people who are really interested in this can understand what was going on, if you could describe the concern you had and what you observed in your good friend, Vince Foster, in the weeks preceding the 20th.

Mr. HUBBELL. With hindsight, Vince was troubled by the publicity he had been getting in The Wall Street Journal. He was troubled by the fact that the internal audit of the Travel Office affair had been very critical of our good friend Bill Kennedy, and he felt personally to blame for that. With hindsight, the significance of the disease was a lot worse than anybody saw. He was overly suspicious about things, was afraid to use the telephone when he talked to me.

Senator KERRY. Did he not relay to you in a conversation, in fact, he was frightened, didn't trust the telephones at the White House?

Mr. HUBBELL. Yes, he did.

Senator KERRY. What was your reaction to that when you heard that?

Mr. HUBBELL. At the time I just thought ah, Vince. With hindsight, I think it was significant of how serious the disease had become.

Senator KERRY. What other observations did you make?

Mr. HUBBELL. Most of the people, as you know, spent the weekend together before he died and we talked about how tired he was, how down he was. But actually having a good weekend away from Washington, he said he felt a lot better when I left him that evening and then I saw him on Monday.

Probably the hardest thing for me is I visited with him on Monday and he said how much better he was feeling, and that he was going to try to get away that next weekend, that he missed getting away from Washington. He had forgotten how tired and depressing Washington was, and I reported that to the Chief of Staff that day. That's the last conversation I had with Vince.

Senator KERRY. Why did you report that to the Chief of Staff? Was there evident concern about him at that point?

Mr. HUBBELL. I think we were all concerned. Vince had lost weight, had seemed to be depressed. The Chief of Staff was aware that Vince was upset with the internal review and report of the Travel Office. He was concerned and he believed other people had

not taken the blame, specifically the FBI. So Mack had a conversation with me just to find out what was troubling Vince and we actually scheduled a meeting that Monday to talk about it to see what we could do to help our mutual friend. Unfortunately, Senator, I told Mack that I thought Vince was doing better.

Senator KERRY. Just a final set of questions, and then I'll turn my time over to Mr. Ben-Veniste. With respect to this investigative process—you've been a lawyer for how many years?

Mr. HUBBELL. I've been a lawyer for over 20 years.

Senator KERRY. You've represented clients in litigation; correct?

Mr. HUBBELL. That's correct.

Senator KERRY. Can you imagine any circumstances—or even based on your brief experience at the Justice Department, can you imagine any circumstance in which police of one jurisdiction or another would be allowed to roam willy-nilly through an office of, let's say, the CIA?

Mr. HUBBELL. No, Senator.

Senator KERRY. Through an office at the Pentagon?

Mr. HUBBELL. No, Senator.

Senator KERRY. Through the Senate Security Office?

Mr. HUBBELL. I don't know how you run your security office, but I don't believe so, Senator.

Senator KERRY. Certainly the White House Counsel's Office is an office through which sensitive documents flow, is it not?

Mr. HUBBELL. That is certainly correct.

Senator KERRY. Not to mention given the fact that the office is the Counsel of the President. There is indeed a lawyer-client privilege between the President and the Counsel, is there not?

Mr. HUBBELL. I believe so, yes.

Senator KERRY. Is there not a long record, which Republican Presidents have probably asserted more than Democrats, of executive privilege?

Mr. HUBBELL. I'm familiar with the executive privilege because we defended a lot at the Justice Department.

Senator KERRY. Is there anything unusual whatsoever about a Counsel in the White House being concerned about a procedure for the review of files that might contain sensitive information and which, on the face of it, looking at the potential of a suicide, have nothing to do with an investigative process?

Mr. HUBBELL. I would be surprised if there wasn't a procedure that had to be worked out before anybody could look at Vince's files.

Senator KERRY. I yield my time to Mr. Ben-Veniste.

The CHAIRMAN. You're going to be down to about 12 seconds.

Senator KERRY. He can do a lot with that.

Mr. BEN-VENISTE. I can wait.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman.

Mr. Hubbell, I'd like to go back to the first few hours following your discovery of information that Vince Foster had died, your first trip to the home of Vince Foster and some of the conversations about your concerns immediately about sealing the office—I think

this comes from your legal background—and your concerns right away that there might be some information in that office that could be of concern, your conversations with your friend Marsha Scott, and also with your wife, and your conversations with Mack McLarty and also with others saying that you had real concern and asked questions or directives, should the office be sealed; is that correct?

Mr. HUBBELL. I don't remember saying it, but other people certainly do, that I said to be sure to lock the office or words to that effect.

Senator GRAMS. Again, as you have testified, there was so much on your mind that you woke up in the middle of the night and one thing you thought of was has the office been sealed. So you had that on your mind, even in the middle of the night?

Mr. HUBBELL. I did, and I made a phone call the next morning about it.

Senator GRAMS. That was to Mr. Bill Burton; is that correct?

Mr. HUBBELL. That is correct.

Senator GRAMS. In your conversation the next morning in connection with the sealing of the office, what did Mr. Burton tell you when you asked him of your concern?

Mr. HUBBELL. He told me Mack had directed the office be locked.

Senator GRAMS. It was your assumption at that time that had been taken care of?

Mr. HUBBELL. Yes.

Senator GRAMS. You were under the impression that the office had been sealed that night of July 20, 1993?

Mr. HUBBELL. That was my impression, yes, at that point.

Senator GRAMS. Now, the fact, in your opinion—and one of the questions and concerns I had, and we've heard a lot of this—was that the White House was very concerned about possible national security issues, possible sensitive nominations that were impending in the office, attorney-client privilege.

If the White House would have been so concerned in those Members of the Administration that came there, why didn't the White House immediately ask to have that office sealed and to ensure the integrity, to ensure an inventory was done, to make sure that nobody was going to see the sensitive material? But yet the White House never did that. Instead, three Members of the Administration went into the office and at will were looking through the files with no supervision?

Mr. HUBBELL. I don't know that that occurred. I don't know what happened, whether the office was locked or not locked. I assumed it was. What I wouldn't be surprised about is that Mr. Nussbaum go in and at least look on the top of the desk to see if there was a note. I think that would be logical and appropriate.

Senator GRAMS. But the White House never did ask to have it sealed, even as of late the next morning, and then there was no lock, there was only a guard posted at the door. We've heard a lot of concern here about national security and everything else, but yet the White House itself never took those steps even though the Park Police were asking for them, even though people like yourself with your legal background and training indicated that this might be a concern, that we want to maintain the integrity of this office.

Mr. HUBBELL. Senator, I really don't know. I heard somebody say yesterday that the office was locked. It was opened for an hour and then relocked, but I don't know what happened.

Senator GRAMS. That night?

Mr. HUBBELL. Yes.

Senator GRAMS. But I'm talking about the hours following that and even into the next morning when you had assurances or a thought that the office had been sealed. Even at that time there had been no steps taken to ensure the integrity of that office?

Mr. HUBBELL. I don't know what was done, Senator. I wasn't there.

Senator GRAMS. Should they have done that, in your opinion?

Mr. HUBBELL. I believe they should have locked the office, yes.

Senator GRAMS. Now, removing yourself from this set of circumstances and I know the traumatic time that you and your friends went through at this time, but if you could remove yourself from this pertinent case and say it was some other case involving similar circumstances maybe, would you have been questioning the White House role, the interference or the delays rather than the Park Police and the Department of Justice being given that type of access? Would you have had some concern, in your position with the DOJ, of the White House stepping in in this case?

Mr. HUBBELL. It's hard for me to answer that question because I don't know that the White House did anything. I mean, there's a presumption that I can't make yet because I don't know what the White House did, other than I know that Bernie was involved in the review of certain files. I don't know that the White House did anything else one way or the other, so it's really hard for me to presume that.

I don't think, with hindsight, that it was inappropriate for somebody, the White House Counsel, given the time constraints of the review of the office, that somebody in the White House Counsel's Office would have had to be part of that supervision. When I told Bernie to stay out of it, I really, to be honest with you, wasn't thinking about executive privileges or things of that sort or when the office was going to be reviewed.

But it's really difficult, because I just don't know what was done, for me to sit in judgment. I can't sit—the one thing I can say is that I can't segregate the events. You just can't do that. This was a man who had become a brother to Bernie Nussbaum, who had become a brother to Maggie Williams, who was—people were just in such shock, and their feelings were overcoming us all, that you can't segregate what was done from the emotions of the day. I couldn't do that, and I don't know how anybody else could.

Senator GRAMS. Let's look at someone who could remove himself, and that was Mr. Heymann, the Deputy Attorney General. According to your deposition, you said that Mr. Heymann was saying the Park Police were on the verge of saying that Nussbaum had interfered with that investigation, and I'll read from that. The question was, "What sort of problems did Mr. Heymann indicate that it could lead to?" Your answer was, "He thought that the Park Police were close to saying that Bernie had—was interfering with the investigation."

That's what I'm trying to ask. If we're looking at someone who is removed from this situation and not as close, no matter what the motive or reasons were, there was the appearance to many that the White House was interfering with this investigation?

Mr. HUBBELL. That's what Phil told me, and that's why Phil called Bernie, I believe, yes.

Senator GRAMS. Did you have any conversations with Mr. Nussbaum in the weeks following about how these events unfolded in, say, 2 or 3 or 4 weeks after? Did you ever sit down with Mr. Nussbaum and go back and say this was a mistake or why did you do that? Did he try to justify some of the reasons of breaking the agreement with the Park Service, not sealing the office in advance, any concerns like that that you raised in your questions with him?

Mr. HUBBELL. No, Senator, I did not. I met with Bernie a lot of times, usually talked to him on the phone on a daily basis, but we were busy. We had tons of things to do and we did our work, and I didn't ever sit down and question him about that.

Senator GRAMS. I have no more questions. I'd like to yield whatever time I have remaining to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Senator.

Mr. Hubbell, if I could come back to a couple of points, I believe you testified a moment ago that on the morning of the 21st, which was the morning immediately after Mr. Foster's death, you called Mr. Burton at the White House about sealing the office; is that correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. This is something you yourself remember?

Mr. HUBBELL. I do remember this, yes.

Mr. CHERTOFF. Am I correct that you called, you think, sometime before 8 a.m.?

Mr. HUBBELL. I do, although I have to admit my time could be way off because I don't think I went to bed until 2 or 3 a.m. and didn't sleep. Then, when you showed me my mobile phone records the next day, it doesn't look like I even called Lisa's house until 10 a.m., so it could have been later, but I believe it was around 8 a.m.

Mr. CHERTOFF. It was one of the first things you did?

Mr. HUBBELL. It was probably one of the first things I did.

Mr. CHERTOFF. Mr. Burton told you that the office had already been secured and locked; correct?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. He gave you the impression that had been done the night before?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Did he tell you that there had been people from the White House in Mr. Foster's office the previous night shortly before midnight?

Mr. HUBBELL. No, he did not.

Mr. CHERTOFF. On the morning of the 21st you also had a conversation with Mr. Nussbaum; correct?

Mr. HUBBELL. I'm sure I talked to Bernie—oh, on that morning, yes, I know I talked to Bernie.

Mr. CHERTOFF. That's the conversation in which you advised him that he ought to stay out of the matter; correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Did he tell you at that time that he himself had been in Mr. Foster's office shortly before midnight the night before?

Mr. HUBBELL. No, he did not. I know I had at sometime a conversation with Bernie where I asked Bernie if he found a note, and so the logic is at some point he went in and looked to see if there was a note, but I can't tell you when I had that conversation.

Mr. CHERTOFF. Did you have it on the morning of the 21st?

Mr. HUBBELL. I don't believe so. I mean, my recollection of the events of the 21st were that we all assembled in David's office and heard the report from the Park Police, and then everybody was rushing to get out of that because they had, I believe, a lot of things to get done, so my conversation with Bernie was very short. It may have been later that day or it could have been the night of Vince's death. I just don't know.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Senator.

Mr. Hubbell, as I examined the record, I don't see any violation of law. I do see a number of mistakes. As you have provided us an insight into what occurred on the night of July 20, 1993 and immediately thereafter, it seems to me that several things were occurring.

I am impressed with the emotional impact that this tragic suicide had upon you and others who, in some instances, knew Mr. Foster for many, many years. There was an obvious solicitude for the Foster family, which was devastated by that news, and so those emotions are profound and they are, to some extent, overpowering.

In addition, it looks to me as if there were a number of very significant legal questions that arose in terms of how to handle the contents of the Foster office. You just made a couple of notes. There may indeed have been personal files. I suppose even in the latter decade of the 20th century, Presidents are allowed to have some personal files. The concept of executive privilege, not established by this Administration but by the Administration of George Washington and accepted by every Presidential Administration since that time, and the question of attorney-client privilege, all of which are very legitimate issues.

I think to your credit you recognized, in light of the emotion, in light of the legal complexities that hey, look, maybe, Bernie, you ought to step aside. I'm paraphrasing. Is that the essence of what you were suggesting to Mr. Nussbaum?

Mr. HUBBELL. I was suggesting that he think about it, that in making those decisions, that be one of the considerations he make. In other words, before you jump in and grab this ball, think about whether you ought to grab it or not. That's what I was suggesting, that that be in the thought process.

Senator BRYAN. I ask that question because we had a very thoughtful colloquy with Mr. Nussbaum last year and it dealt with the issue of recusal in the context of Mr. Altman's role, wearing the

two hats as he did of Acting Head of the RTC and Deputy Secretary of the Treasury.

Very clearly, Mr. Nussbaum had a view of recusal that is very different than my own, and I think, frankly, did not have a broad sensitivity to public perception and Senator Shelby and I questioned him intently on that. Mr. Nussbaum is a great advocate about that, but I think he has a blind side.

My question is in the context of what occurred, what we have now learned are the mistakes that have been made. What kind of advice do you give us in terms of how we deal with these kinds of issues, if, heaven forbid, prospectively any other Administration is left in this kind of a situation, specifically with respect to this concept of recusal and the very difficult conflicting personal emotions and the legitimate public policy questions that arise as to the handling of the contents of an officer of the Federal Government who may also have personal records of the President, who may have records that are subject to attorney-client privilege and who may have records that are protected by the executive privilege?

Mr. HUBBELL. Senator, the first thing is I pray that this event never occurs to any Administration.

Senator BRYAN. We all join you. But I think that it's helpful to look at this thing, what have we learned, what could we have done to have precluded this conflict from arising?

Mr. HUBBELL. I think certainly, in light of what this hearing is about, we know that there will be, if this ever occurs again, a ton of questions about why we won't accept—we haven't learned enough about depression. This country needs to know a lot more about depression and what kind of disease it is. But somebody in that position, people are going to ask what was in his office, what would have brought this on?

If I could give Bernie any advice today, it would be to have a more Southern litigator approach, and that is to perhaps handle the documents in a more inventory-type manner, so there is no question about what those files were, preserve the privileges, consider what they are, but have a way that everybody can know that those documents were handled in what I call a Southern litigator approach.

Senator BRYAN. Where I'm coming from, Mr. Hubbell, it seems to me the role of the White House Counsel needs to be more thoughtfully defined when you have these kinds of situations. You may not be saying it publicly, but it strikes me instinctively you had some reservations about having someone who had close personal feelings, very strong feelings—that's one reason why they say that a lawyer that represents himself has a fool for a client. I suspect that you had some reservations about making some of those decisions in light of the strong personal feelings that everybody had?

Mr. HUBBELL. I have to admit my feelings are still clouded by my affection and respect for Bernie. I want to say this: I don't know if anybody but the White House Counsel can make the call on executive privilege or attorney-client privilege. I just don't know who else could do that, and that's the dilemma that Bernie is put in. On one hand he is close. It is personal. He's going to be criticized. On the other hand—and maybe that's what this Committee should

look at—who else could have done it, and I don't know the answer to that.

To this day, I don't know if anybody but Bernie Nussbaum could make the call on looking at certain documents as to whether the executive privilege attached or not and who should be allowed to see it and in what fashion. On the other hand—and there were time constraints and personal constraints. I just don't know, and I do think it's a legitimate question.

I think that what I was trying to tell Bernie is think about this, but I haven't ever talked to him about it, what went on in his mind as he thought about it. He said really, let's talk about it. I would have liked to have had that conversation because he might be able to say Webb, I don't think anybody else could have done it, especially the next day.

I mean, I think one of the things we have to look at is it isn't that Bernie could have brought in somebody from the outside very quickly, and the Park Police were wanting to get in the office.

I think those are certainly good questions. I just don't know the answer, and I'm going to be interested at what Mr. Nussbaum says. I'm sure you're going to ask him those questions as well.

Senator BRYAN. Thank you, Mr. Hubbell. Let me yield my time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Bryan.

Mr. Hubbell, let me follow up finally on Senator Shelby's question about search warrants and if he were Mr. Heymann back in July 1993.

Did Mr. Heymann at any point in any discussion you had with him or any discussion that you know about suggest, even remotely, the possibility that the Justice Department would attempt to seek a search warrant for Mr. Foster's office?

Mr. HUBBELL. No, he did not.

Mr. BEN-VENISTE. In response to your observations about Southern litigators versus Northern litigators—and not to get into any discussion where I might have a vested interest, Mr. Chairman, allying to yours—I take it what you're saying is despite all the privileges that were involved and the weighty issues of executive privilege, attorney-client privilege and the subsidiary issue of the Foster family privacy associated with all of this, it's your view, then, that if Mr. Nussbaum had adopted a more relaxed approach with the Park Police when they first made the request to search for a note or similar evidence of state of mind in Mr. Foster's office, that if Mr. Nussbaum had just said come on in guys, have a cup of coffee. Let's look around. Here are the files on health care, do you want to go through those? I don't think so. Do you want to look at the vetting file for Attorney General Reno or the list of possible Supreme Court nominees? I don't think you want to look in there, and I can't let you look in there, but let's look around and see if there's a note. Do you think that might have resolved the issue right then and there?

Mr. HUBBELL. The Park Police would be the ones who would have to answer that question, but it's my impression from talking to Phil that that would have gone a long way toward accommodating the Park Police.

Mr. BEN-VENISTE. Now, there's been some discussion about sealed and locked. I'd just like to follow up on that question, Mr. Chairman, if I may.

The CHAIRMAN. Absolutely.

Mr. BEN-VENISTE. When you thought about the office being locked, you weren't, I take it, talking about some big yellow evidence sticker or a banner being put across the suite of the White House Counsel's Office?

Mr. HUBBELL. No, I was not. I can tell you what was on my mind. I don't know if it's proper procedure or not.

Mr. BEN-VENISTE. Go ahead, sir.

Mr. HUBBELL. That would be that the office would be locked and if you had the manpower, then have somebody log in if somebody went in and have somebody log out if they went out.

Mr. BEN-VENISTE. In fact, that was done the next day. Did you know that?

Mr. HUBBELL. I don't know that. I really don't.

Mr. BEN-VENISTE. But, in any event, as far as you were concerned, if the office was locked, that would have taken care of the matter?

Mr. HUBBELL. Yes.

The CHAIRMAN. Again, in the interest of making some kind of sense, when Members or counsel have a line of questioning that they are close to completing, I would hope that we would give deference so that could take place. That has been the case this morning and throughout the hearings. We ran several minutes over, and I intend to even that out. So, Mr. Ben-Veniste, please continue.

Mr. BEN-VENISTE. Simply to bring closure to the issue of locked versus sealed, some of the questions have been put to you in terms of sealing the office. I'm not sure exactly what that means, and perhaps others will shed light on their definition of that term, but as far as you were concerned, if somehow the office was locked, that would have been satisfactory; correct?

Mr. HUBBELL. Yes. I would have preferred to have somebody there to log if people went in or out.

Mr. BEN-VENISTE. Finally, the next day when you had your conversation with Mr. Nussbaum, it became clear to you that Mr. Nussbaum or someone else had looked in the office to see whether there was a suicide note left by Mr. Foster; is that correct?

Mr. HUBBELL. That's correct.

Mr. BEN-VENISTE. Did you find that to have been a reasonable and appropriate thing to do?

Mr. HUBBELL. Yes. I think everybody was searching for a note, and I think it would be somebody of the stature of White House Counsel to open the door, walk in and see if there's a note. I think that is appropriate.

Mr. BEN-VENISTE. Thank you very much, sir. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Ben-Veniste.

Let me, at this point, point out that yesterday Senator Sarbanes and I and indeed the entire Committee agreed that we would request from Judge Starr on behalf of all the Members of the Committee, reiterate our request for the testimony and notes of Officer O'Neill and Mrs. Williams, Maggie Williams, as well as any poly-

graph tests that the Independent Counsel might have. We'll release a copy of that request and the letter, the initial letter, which was sent by the Committee or by counsel to the Committee on July 11th. So we have asked, and we just say on behalf of all of the Members of the Special Committee, we reiterate the request that we made on the 11th. I'd just like to note that and we have undertaken that. Can you put on the clock?

Mr. Hubbell, I'd like to take this opportunity, and I know that you are not familiar with all the people who did enter the office and the manner in which the review was taken, certainly not by your own knowledge, and maybe you've gleaned some of this from some of the questions that have been asked of you, some of the stories that have appeared in the press, and you certainly can't make a judgment on the basis of hearsay or what you've heard, but let me ask you this: Should a person without security clearance have been allowed to search Mr. Foster's office?

Mr. HUBBELL. Search his office?

The CHAIRMAN. In other words, go through his office, go through his documents. If you had a person who did not have security clearance, would that be appropriate? Again, let's remove it from Mr. Foster's office. Given the situation where confidential materials are stored, questions of national security, et cetera, would it be, in your judgment as a former Member of the Justice Department, would you say that is proper?

Mr. HUBBELL. I would certainly prefer if somebody didn't have a security clearance, that they not go into an office that had confidential materials, except perhaps, again, to look on the top of the desk to see if there's just a note sitting on top of it.

The CHAIRMAN. But, certainly, would it be appropriate for a person to go through various files and be permitted in that office which had materials of national security? I have to tell you why I raise this. I am troubled, and obviously we will attempt to explore this in some detail, by how it is that Patsy Thomasson searched or was in that office for up to an hour. Apparently she did not have a security clearance as of that date, July 20, 1993. That's troubling. Would that trouble you if another person, forget Patsy Thomasson, didn't have clearance and came into an office, recognizing the sensitivity of the materials in the office. Whether it be national security issues, issues of a personal nature, et cetera, would that be appropriate?

Mr. HUBBELL. I don't know the truth of what you——

The CHAIRMAN. I understand that. I'm just giving you a hypothetical.

Mr. HUBBELL. I would have concerns about somebody not having a security clearance going through files of anybody's in the White House, especially the White House Counsel.

The CHAIRMAN. Thank you very much.

Senator Shelby.

Senator SHELBY. Thank you.

Yesterday, Senator Hatch, my colleague, and I will paraphrase part of his opening statement, said, "Most troubling are the questions pertaining to whether the White House obstructed the Justice Department's investigation into Mr. Foster's death." He follows on, "It seems clear that certain White House officials entered Mr. Fos-

ter's office before law enforcement investigators could examine the scene and that we need to ascertain," and this is part of what we're doing, "whether subsequent removal of documents in the search of the office was politically motivated, illegal and improper or, as some people think, just signs of poor judgment and panic."

Now, my question, I want to get to the attorney-client privilege. Mr. Nussbaum was actually the Counsel for the White House; is that correct?

Mr. HUBBELL. Counsel for the President.

Senator SHELBY. President of the United States. Now, as such, he was a public servant, was he not?

Mr. HUBBELL. Yes, he is.

Senator SHELBY. Just like you were a public servant?

Mr. HUBBELL. That's correct.

Senator SHELBY. You didn't work personally for the President of the United States, Mr. Hubbell; you worked for the Justice Department?

Mr. HUBBELL. I worked for the people of the United States.

Senator SHELBY. The people of the United States. So did Mr. Nussbaum; is that correct?

Mr. HUBBELL. That is correct.

Senator SHELBY. When Mr. Nussbaum was putting his hand up saying don't come in the office—I just use that as a metaphor—the FBI can't come in the office, the Park Police can't come into the office, we're going to go inventory everything first, and then he entered into an agreement with the Justice Department, with our own Justice Department, he's the White House Counsel, a public servant. Philip Heymann is the Deputy Attorney General of the United States, and they had to enter into an agreement to look at what was in this Deputy Counsel's Office at the White House. Does that seem odd to you?

Mr. HUBBELL. Again, Senator, you're giving me facts. I don't know if they're true or not true.

Senator SHELBY. I know, but you know there was an agreement?

Mr. HUBBELL. I know that Phil told me there was an agreement, yes.

Senator SHELBY. As to the rules of looking and inventorying the office and searching the office?

Mr. HUBBELL. Yes, I do know that Phil felt like he had an agreement with Bernie.

Senator SHELBY. Have you heard of any other person in the United States getting an agreement or saying to the FBI or to the Park Police you can't come in here and look at our offices, you can't do this? They would have gone on in there, wouldn't they, or gotten a search warrant and gone on in there?

Mr. HUBBELL. I don't know that, Senator.

Senator SHELBY. You're a reasonable person——

Mr. HUBBELL. I'll give you an example.

Senator SHELBY. OK.

Mr. HUBBELL. Say the FBI or the Special Counsel wants to go into a law firm and look through the firm's records. Usually, there's a negotiated agreement with regard to the privilege.

Senator SHELBY. But if there's not an agreement—let's say there was an agreement and then the law firm broke the agreement, said

no, you can't do this, what would the Justice Department ordinarily do? Wouldn't they try to go to a judge or a magistrate to the next step?

Mr. HUBBELL. I would first try to work it out. Maybe that's just my attitude, that you first try to work out any disagreement before you have to go to court.

Senator SHELBY. Isn't time of the essence in inventorying and looking at something? In other words, time was important, the timeliness of going through an office to inventory what was there, especially after people had already been through the office. Senator D'Amato just mentioned Patsy Thomasson going through the office, looking for documents and so forth with no security clearance. Time is important?

Mr. HUBBELL. It depends on the circumstance. If you have the door locked and you have somebody who is keeping track of who goes in and out, and nothing is being removed, then I wouldn't think time is of the essence. I don't know what happened, Senator.

Senator SHELBY. Basically what happened, the fox was watching the hen house this time, wasn't he? Mr. Nussbaum—if you can use that category—he was the fox watching the hen house to make sure that his inventory or what he was going to see in there was going to be protected before the FBI or the Park Police got in, isn't that the bottom line?

Mr. HUBBELL. Senator, again, I just don't know what happened, so I can't tell you. I believe the Secret Service was the one who was guarding the office, but I may be wrong about that. I don't know.

Senator SHELBY. Do you believe that there's any attorney-client privilege between the President of the United States and the White House Counsel, who is a public servant, not a personal attorney?

Mr. HUBBELL. Yes, I do.

Senator SHELBY. What's that based on?

Mr. HUBBELL. That's just gut reaction. I've never done any research, Senator.

Senator SHELBY. You haven't done any research. Now, if I had someone on my staff as a Senator as counsel—and I do—to do Senate work and so forth, would you think that I would have an attorney-client relationship with that person, or would that person be a public servant?

Mr. HUBBELL. I believe that you would have an attorney—your counsel——

Senator SHELBY. My counsel working for the Government, paid by the Government, would be my personal counsel?

Mr. HUBBELL. He would have an attorney-client privilege. I did not say he was your personal counsel. I may be—I've just never done the research on this, Senator.

Senator SHELBY. You don't know. When Mr. Nussbaum was over at the White House, would you think that he was obviously concerned about more than just the cleaning people going in that office?

Mr. HUBBELL. You're asking if Mr. Nussbaum was concerned about other people coming into the office?

Senator SHELBY. Yes.

Mr. HUBBELL. I'm sure he was.

Senator SHELBY. But he went in the office, did he not?

Mr. HUBBELL. I don't know.

Senator SHELBY. You don't know of your own knowledge?

Mr. HUBBELL. No, I don't, sir.

Senator SHELBY. You don't know of your knowledge or you heard that he went into the office?

Mr. HUBBELL. No, I did not. I've read a lot of articles in the press, but I've learned never to believe them.

Senator SHELBY. Do you believe that the law enforcement officers here, the Park Police, the FBI, the White House Counsel and the Justice Department, were in an adversarial relationship?

Mr. HUBBELL. I would hope not, Senator.

Senator SHELBY. They weren't at all?

Mr. HUBBELL. I would hope they were not.

Senator SHELBY. But when the White House Counsel says no, you cannot go in this office, what does that say to someone?

Mr. HUBBELL. If that was said——

Senator SHELBY. Assuming that was said.

Mr. HUBBELL. I think there would have to be some discussions.

Senator SHELBY. Would that lead you to believe—why would you not want the FBI in there?

Mr. HUBBELL. I can think of reasons why I wouldn't want the FBI in that office, yes.

Senator SHELBY. Would it lead you to believe or draw an inference or reasonable inference that maybe there was something to hide in there?

Mr. HUBBELL. To hide, I think, is the wrong word, Senator.

Senator SHELBY. Why is it the wrong word?

Mr. HUBBELL. Because I wouldn't want the FBI to be reviewing, for example, a short list of Supreme Court candidates and their pros and cons, and have the potential of that kind of thing being leaked to the press.

Senator SHELBY. Why would you—strike that.

What would be wrong with Mr. Nussbaum saying come on in and let's go through and inventory these things together? If I see something that is national security conscious or sensitive, we'll inventory. We've got this item. We'll put a stamp on it. We'll put a number on it.

Wouldn't that look like goodwill and openness and honesty to you?

Mr. HUBBELL. Yes, Senator. I think I've said that that could be a very good way to handle this.

Senator SHELBY. Senator Hatch is here and I'm going to yield the balance of his time back to him.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. I apologize for being late. I'm managing the Regulatory Reform Bill and had to leave for a few minutes.

Good to see you again, Mr. Hubbell.

Mr. Hubbell, you've had extensive experience as a litigator in private practice. You've been a State Supreme Court Justice and you've been a high-level official in the Justice Department. I want to ask a few questions about attorney-client privilege and I hope you can be of assistance. Isn't the attorney-client privilege, as generally defined, a privilege only that, number one, protects commu-

nication and, number two, protects communication between a client and his or her attorney?

Mr. HUBBELL. I believe that's correct, Senator.

Senator HATCH. Isn't the privilege normally asserted in anticipation of litigation?

Mr. HUBBELL. I believe that's correct. That's my experience.

Senator HATCH. Wouldn't you agree that a document can be deemed to be protected by the attorney-client privilege only if it meets those basic requirements?

Mr. HUBBELL. I'm going to only be able to give you the opinion based on Arkansas law, which I don't think is applicable here, but I believe you're essentially correct, Senator.

Senator HATCH. It may have some applicability. Wouldn't you agree that a client—go ahead.

Mr. HUBBELL. No, I'm fine.

Senator HATCH. Wouldn't you agree that a client can waive the privilege either by intentionally waiving the communication or by disclosing it to a third party?

Mr. HUBBELL. In Arkansas, you can have even an inadvertent waiver of the privilege, that's correct.

Senator HATCH. That's probably true in a lot of other places.

Mr. HUBBELL. Right.

Senator HATCH. Let's examine the case of the Whitewater documents that the President has chosen to withhold based upon a claim of executive privilege.

Now, Vincent Foster was a Government employee; right?

Mr. HUBBELL. That is correct.

Senator HATCH. Therefore, while acting as Deputy White House Counsel, Mr. Foster could not or at least should not have acted as President Clinton's personal attorney; isn't that right?

Mr. HUBBELL. I don't know, Senator, whether there were restrictions on White House Counsel doing personal work for the President or not. It would seem to me that they are—it's almost impossible not to have the White House Counsel at least involved in doing personal work because of all the disclosure laws and things of that sort.

The CHAIRMAN. Senator Hatch, I do not mean to interrupt this line of questioning, but I think you're going to need a little more time to develop it, so why don't we stop at this point and we'll return to you.

Senator MURRAY. Mr. Chairman, can I ask a process question? I'm just a little confused.

The CHAIRMAN. Sure.

Senator MURRAY. I'm trying to figure out, going back and forth here, who's yielding time. It was my understanding, correct me if I'm wrong, that somebody has to be here to yield time.

The CHAIRMAN. I yielded my time to Senator Shelby. If you note, I took about 2 minutes and then the balance of my time went to Senator Shelby. The next person, Senator Shelby, had about a minute which he gave to Senator Hatch. So I see that Senator Hatch is pursuing a line of questioning that will take some time. That's why I suggested that rather than go further, because we understand a minute or 2 minutes over, but more than that we

should wait until we return back to this side. He will be the next person who we recognize.

Senator MURRAY. I appreciate that. It's difficult to tell from down here whose time is being used so that we know——

The CHAIRMAN. It was on my time that Senator Shelby undertook the further questioning of Mr. Hubbell.

Senator MURRAY. Am I correct that our rules state we have to be here to yield our time?

The CHAIRMAN. That's correct. I was here.

Senator MURRAY. Thank you.

Senator SARBANES. I say to the Senator from the State of Washington the Chairman and I have discussed that prior to you putting the question, although it's a very good question. The way the rules are written at the outset, as happened, the Chairman gets a half hour, then the Ranking Member gets a half hour. Then it alternates, 10 minutes in each direction. If a Member gets his 10 minutes and doesn't want to use all of it, he can yield, assuming he's here, the balance of his time to another Member or to counsel to ask questions. Then it moves back and forth. Now, it appeared to get out of that framework, but I think we'll be back in that framework, and that's what was very specifically worked out in the resolution.

Senator MURRAY. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much.

I just have an observation before I get to my questions of Mr. Hubbell, and that is that we haven't used this video arcade at all today, and I understand that it's expensive to have it here. I hope that we can reassess that, maybe, because I think it's a question we ought to look at.

The CHAIRMAN. If I might, with respect to addressing that——

Senator BOXER. With respect to the rest of my time I'll yield to my friend.

The CHAIRMAN. Why don't you continue and I'll respond later.

Senator BOXER. Thank you.

Mr. Hubbell, I want to take you back to what you described as one of the worst, if not the worst, nights of your life because I think it's important for me to understand what people were focused on that night and I think I do understand it, but I think the American people should understand it. You were one of the closest friends of the Foster family; is that correct?

Mr. HUBBELL. That is correct.

Senator BOXER. Your wife as well; is that correct?

Mr. HUBBELL. That is correct.

Senator BOXER. You knew his family, his sisters; is that correct?

Mr. HUBBELL. I worked with Sheila. Sharon lived down the street from me in Little Rock. I've been close to the family for a long time.

Senator BOXER. It seemed to me, from your description of the events, you were the one they turned to in this moment of tragedy and need and you went with the sisters to the home of Mrs. Foster,

and you described the situation there. Would that be an accurate assessment of mine, that they turned to you to help them through this?

Mr. HUBBELL. Yes, yes, Senator, that is correct. It was a duty I was happy to take on.

Senator BOXER. When you got there, you tried to break the news to Mrs. Foster, but you were not able to do that, and the Park Police did that; is that correct?

Mr. HUBBELL. That is correct. They said they had to do it.

Senator BOXER. They went into the home first?

Mr. HUBBELL. That is correct.

Senator BOXER. When you went into the home, did the Park Police rush up to you and say we have to seal off this home, we have to search this home for a note, we have to search this home for other documents which could lead us to what really happened here? Did anyone in the Park Police say that to you?

Mr. HUBBELL. No, they did not.

Senator BOXER. When you were in that home, you testified that there were many other people associated with the White House who were at the home that evening.

Mr. HUBBELL. That's correct. A lot of people who were close to Vince or Lisa came over that night, as is normally the case in such a tragedy.

Senator BOXER. At any time did you or anyone else from the White House or associated with the White House say that you needed to go off to a room and talk about what the next steps were, what to do about Vince Foster's office, what to do about the papers that he may have? Was there any such meeting or conversation on the night of this tragedy?

Mr. HUBBELL. No, there was no such conversation. There would not have been room to do it if we wanted to. The house was small, and we were all congregated on the first floor. No one went up, except to be with Lisa, to their bedroom upstairs.

Senator BOXER. So you would say that—when you say that that night, although—there were how many people from the White House? I think you've testified, I thought, to about a half dozen. Were there at least that many?

Mr. HUBBELL. At least that many. I'm sure there were more, and the days blend together, but that night, I know the President came. Mr. Gergen came. Mack was there. David Watkins was there. Bruce Lindsey was there, but I'm sure there were other people there. We were—the room was full. Senator Pryor was there and Barbara, Beryl Anthony got there later, the kids got there. It was a typical scene and as I said, the phone was ringing off the wall. People were calling from Little Rock, had seen it on CNN in total disbelief, like the rest of us.

Senator BOXER. Would you say, then, that the last thing on people's minds who were there to comfort the Foster family and comfort each other was what to do with sensitive papers or documents? That, as far as you know, there wasn't even such a conversation that night, although there were many people there from the White House?

Mr. HUBBELL. As far as I know, there was never any kind of conversation like that. The only conversation about any piece of paper would have been is there a note, has anybody seen a note?

Senator BOXER. The Park Police never said to you let's close off this house, let's seal it because we're going to look for a note or other documents?

Mr. HUBBELL. No, they did not.

Senator BOXER. Did the Park Police ever tell you that they wanted to seal off Vince Foster's office and look for any type of note or any clues to a suicide?

Mr. HUBBELL. No, they did not.

Senator BOXER. Isn't it a fact, I guess—the Park Police have a right to be upset if they feel they were mistreated and I look forward to hearing their comments, but isn't it true that they could have gotten a search warrant or a subpoena if they wanted it? Didn't they have the ability to do that?

Mr. HUBBELL. I believe that is correct. I had a discussion with them about jurisdiction the next day, so I know they had the authority.

Senator BOXER. Thank you. I yield my remaining time to counsel.

Mr. BEN-VENISTE. Thank you, Senator Boxer.

Mr. Hubbell, I'd like to ask you about a comment contained in a question put to you by Senator Shelby. He asked you whether Mr. Nussbaum and his involvement in determining the procedures to be used in searching for the note in Mr. Foster's office was a situation akin to the fox guarding the hen house.

Now, let me ask you, sir, in connection with the suicide of Vincent Foster, how, in your mind, would Mr. Nussbaum be considered the fox?

Mr. HUBBELL. I don't consider Mr. Nussbaum the fox. I think, to elaborate, Senator Shelby, the files that would have been in Vince's office were the files of the White House Counsel. They were Bernie's files as well, except to the extent of Vince's personal files. It's like a law firm. The law firm's files belong to the firm, not to any one individual in the White House.

Mr. BEN-VENISTE. Now, with respect to——

Mr. HUBBELL. I was trying to talk about that.

Senator SHELBY. I wonder if counsel would yield for 2 seconds.

Mr. BEN-VENISTE. Certainly, Senator.

Senator SHELBY. Maybe he wasn't the fox watching the hen house. Maybe he was the tiger guarding the door, at least that was the perception that a lot of people had of him. They were intimidated by him.

Mr. BEN-VENISTE. Let me ask you about the concept of the tiger in connection with attorneys and sensitive information they receive. Are you aware of any ethical restrictions on attorneys from disclosing confidential information provided by a client? Put aside whether it's the President of the United States who's the client.

Mr. HUBBELL. There are ethical restrictions, and the privilege is the client's, not the attorney's, to waive.

Mr. BEN-VENISTE. What are the consequences for an attorney who might, without the client's permission, disclose confidential information, if you know?

Mr. HUBBELL. I presume back in Arkansas that attorney could be disciplined by the Bar Association.

Mr. BEN-VENISTE. Up to the penalty of being disbarred, losing his right to practice law if it were egregious?

Mr. HUBBELL. If it were egregious, yes.

Mr. BEN-VENISTE. Now, Senator Hatch asked you some questions about the attorney-client privilege and asked whether that privilege was limited to communications from the client. I ask you whether there is such a thing as the work product privilege associated with the attorney-client privilege?

Mr. HUBBELL. Yes, there is a work product privilege in connection with litigation, yes.

Mr. BEN-VENISTE. What does that relate to?

Mr. HUBBELL. Work product produced by the lawyer in connection with the client's business.

Mr. BEN-VENISTE. You've indicated, I think, with respect to attorney-client privilege that one of the ways that that privilege is normally asserted is in connection with a litigation. Let me ask you, if there is no litigation pending and some third party wishes to see the attorney-client privileged materials in an attorney's office, does that mean that the attorney-client privilege doesn't hold?

Mr. HUBBELL. I don't believe so. The analogy I try to make to this circumstance is if the Justice Department or the FBI were to try to come into a law firm and ask for clients' records or the law firm's records. You would be in a position of having to still claim the privilege for your client unless it was waived. I believe that occurs a lot of times within law firms.

Mr. BEN-VENISTE. I see that my time is up now and there may be some more questions along these lines, if I may, a bit later. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Hatch.

Senator HATCH. Thank you, Senator D'Amato.

Mr. Hubbell, again, let's return to the questions exploring attorney-client privilege, because I think it's good to get these out of the way. You stated that attorney-client privilege, as a general rule, applies when there is one, a communication that, two, is between the attorney and the client. Now, let me just continue along that line. I asked you, then, if because of the fact that Mr. Foster was a Government employee, and while acting as Deputy White House Counsel, he could not and should not have acted as President Clinton's personal attorney, and you weren't sure whether he could or couldn't, if I recall correctly?

Mr. HUBBELL. That's correct.

Senator HATCH. Now, wouldn't you agree that Vincent Foster's handwritten notes were not "communications" between Mr. Foster and the President?

Mr. HUBBELL. Which notes are you talking about?

Senator HATCH. Let me put up—why don't we put up Exhibits 87, if we could go to 93—87 and 93 are two good illustrations and maybe 229. Let's start with 87.

Mr. HUBBELL. Yes.

Senator HATCH. You would agree that that's not a communication?

Mr. HUBBELL. I cannot tell from looking at this, Senator, but I have a similar note, and that was a meeting that was held back during the transition as part of a checklist of a lot of things to be——

Senator HATCH. Would it be fair to say you do not believe that was a communication between Mr. Foster and the President?

Mr. HUBBELL. And the President, no, but it could be a reflection of a meeting of lawyers about——

Senator HATCH. Sure, but it's his own personal notes is what we're establishing?

Mr. HUBBELL. Yes, but they could be privileged.

Senator HATCH. Let's go into that. Number 93, wouldn't that be the same? There's just one note on there. Everything else is redacted. Let me take one other, 229.

The CHAIRMAN. I think it's fair to say that the Committee will, at least it is my inclination to, look into the question that has been raised regarding the production to the Committee of pages and pages of blank documents or documents that have been covered over, whited out.

Senator HATCH. Let me get into that, Mr. Chairman.

The CHAIRMAN. But that will be of interest, I believe, in the future, to this Committee.

Senator HATCH. What I'm trying to establish here now is that these three documents with Mr. Foster's notes were not communications between Mr. Foster and the President?

Mr. HUBBELL. They don't appear to be communications between Mr. Foster and the President. They appear to me to be minutes of a meeting with some other people. I don't know who was there.

Senator HATCH. Isn't it true that if a client releases documents, even assuming Mr. Foster was a client, and I don't think you can—the President was a client of Mr. Foster's, but if the client releases information to a third party, even if the documents are in part redacted, that that privilege may be waived with respect to the entire document?

Mr. HUBBELL. I don't know with respect to the entire document. It may be waived as to the extent of the issue, Senator. That's my understanding of the privilege, but, again, I haven't researched attorney-client privileges in a long time.

Senator HATCH. Isn't it possible that the President believed he may get some sort of an advantage if he released portions of the documents but not others?

Mr. HUBBELL. I don't know, Senator.

Senator HATCH. Isn't it true that the President probably didn't think it would be advantageous to release the documents? If he didn't think it would be advantageous, he wouldn't have released them. Wouldn't you agree with that?

Mr. HUBBELL. Senator, I really don't know what the thought process is of the President or his advisors.

Senator HATCH. Mr. Ben-Veniste raised the attorney work product privilege. Doesn't the work product privilege, which is different from the attorney-client privilege, protect an attorney's written work and his thoughts concerning a case involved in litigation?

Mr. HUBBELL. That's usually the case.

Senator HATCH. Isn't it the case that the privilege can be overridden "for good cause" such as an inability to acquire the documents from any other source?

Mr. HUBBELL. As for my understanding of the Federal Rules of Civil Procedure, that is correct.

Senator HATCH. That is correct. Now, since Mr. Foster's notes do not qualify as protected attorney-client communications, and I don't think they do, then do you agree that at best they can qualify as work product, as an attorney work product?

Mr. HUBBELL. I don't know whether they qualify for the attorney-client privilege or not, but they could qualify for the work product privilege.

Senator HATCH. Couldn't the work product privilege be overridden if the Committee cannot obtain these materials in any other way?

Mr. HUBBELL. A court could make that determination, or it could go the other way.

Senator HATCH. If you wanted to keep a document privileged, you ordinarily wouldn't release it to the press, would you? I think that goes without saying.

Mr. HUBBELL. That goes without saying.

Senator HATCH. You wouldn't release a portion of that document to the press, would you?

Mr. HUBBELL. Senator, I have a bias about releasing anything to the press.

Senator HATCH. My point is, as a good lawyer, you wouldn't do that if you wanted to retain the privilege?

Mr. HUBBELL. It would be risky, yes.

Senator HATCH. That's right. Finally, if you wanted to keep a document privileged, you wouldn't want anyone other than the lawyer or the client to have possession of it, would you?

Mr. HUBBELL. I believe the best way to protect all privileges is to keep the documents in the possession of the lawyer or the client.

Senator HATCH. That's right. Now, a person, that is, the client, can always choose to waive the attorney-client privilege, can't the client?

Mr. HUBBELL. That is correct. The privilege is the client's.

Senator HATCH. So, assuming the attorney-client privilege protected some of the President's documents, if the President wanted to open the documents to the public, he could always waive the privilege if he wanted, couldn't he?

Mr. HUBBELL. If that is the only privilege that attaches. I don't—we're talking in hypotheticals, and I don't think we're talking about national security documents.

Senator HATCH. No. We're talking about these documents. We're talking about——

Mr. HUBBELL. I don't know what these documents are——

Senator HATCH. I'm talking about Whitewater documents. Let's limit it to those. But he could waive the privilege if he wanted to?

Mr. HUBBELL. The President can waive the privilege.

Senator HATCH. Let me just say this. Given your familiarity with the public and private law practice that you've had, and you've had extensive experience, you're well acquainted with the fact that Gov-

ernment lawyers are generally prevented from doing legal work for private persons, aren't they?

Mr. HUBBELL. My familiarity is with the Justice Department.

Senator HATCH. But you wouldn't allow anyone at the Justice Department—when you were Deputy, you wouldn't allow them to have a private practice on the side while fully employed by the Government, would you?

Mr. HUBBELL. No, except to the extent of pro bono work, Senator. We did try to adopt rules that would allow Justice Department lawyers to do work pro bono.

Senator HATCH. Those rules exist so Federal officials will not be working on private matters at the expense of the Federal treasury; right?

Mr. HUBBELL. Yes, Senator.

Senator HATCH. Don't they exist to prevent conflicts of interest that may arise when the official's public duties and private interests conflict?

Mr. HUBBELL. There are conflicts and problems, if you were to do——

Senator HATCH. Such as one of the things we're trying to avoid by not having Government lawyers working for private citizens.

Mr. HUBBELL. That's something that we consider in adopting the pro bono rules.

Senator HATCH. In your tenure in the Department of Justice, wouldn't you have found it troubling that a Government lawyer also represented somebody else on a purely private matter?

Mr. HUBBELL. It would depend on what it was, Senator. I'm not trying to split hairs——

Senator HATCH. Pro bono you've mentioned. That's the only case, though, isn't it?

Mr. HUBBELL. If you had a good friend who needed a will drawn, I don't think I'd get my nose out of joint. But if he was engaged in an extensive law practice, I probably would.

Senator HATCH. Here we have work on the President's private tax returns. Wouldn't that be purely a private matter, in your opinion?

Mr. HUBBELL. Senator, in my opinion the President is a unique individual. He has personal matters, but they are so wrapped up into his public duties and public disclosures that I think the President has a unique position. So I don't necessarily agree with you. I have never done any research on it. We could probably ask our good friend Walter Dellinger if he has, and he probably has one way or the other.

Senator HATCH. He probably has.

Mr. HUBBELL. I have never done any work on it, but I'd certainly ask Walter.

Senator HATCH. Sure. Let me say this: In fact, the Rose Law Firm originally had documents relating to the President's taxes; right? The Rose Law Firm did his taxes?

Mr. HUBBELL. I don't believe the Rose Firm did his tax work, Senator.

Senator HATCH. Did they have any documents pertaining to his taxes?

Mr. HUBBELL. The Rose Firm?

Senator HATCH. Yes.

Mr. HUBBELL. If they did, it was after I left the firm.

Senator HATCH. You were involved in preparing the transfer of certain documents to the White House, weren't you?

Mr. HUBBELL. Certain documents to the——

Senator HATCH. Let me make it clear. Some of those files were labeled Whitewater and Madison; isn't that correct, that you transferred them to the White House?

Mr. HUBBELL. I never delivered any Whitewater or Madison files to the White House, Senator.

Senator HATCH. But you prepared the transfer and they were transferred to the White House?

Mr. HUBBELL. They were transferred to David Kendall.

Senator HATCH. You didn't prepare the transfer or help to prepare a transfer of Whitewater and Madison files to the White House?

Mr. HUBBELL. To the White House, no, Senator.

Senator HATCH. I guess my time—can I just follow with one more question?

The CHAIRMAN. Go ahead.

Senator HATCH. In your deposition—I can't see what page—on page 13 of your deposition, it said "after the election"—the question was:

Question: How did you become more familiar after the election?
Answer: After the election, one of the things I assisted the transition in doing would be—was to assemble records that had been compiled during the campaign and make decisions about what should happen to those and some of those files that had been at the campaign, and I determined whether they should go. So I was aware that there were files that were labeled Madison, Whitewater, things of that sort, that were in what we referred to as the Betsey files, Betsey Wright's files.
Question: Where did they go?
Answer: They ended up in my house.
Question: Of all the files you're aware of?
Answer: All the files I'm aware of, yes, of the Betsey files.
Question: I take it they're not at your house today?
Answer: No, they are not.
Question: Where did they go after your house?
Answer: They came to Washington and ultimately were delivered to David Kendall, the attorney for Mr. and Mrs. Clinton.

Did they go to the White House or did they go——

Mr. HUBBELL. No, they never were in the White House, Senator. They were here in my house in Washington and, ultimately, almost all of the files I delivered to David Kendall. There were some small files that I delivered to another lawyer for the President.

Senator HATCH. I see.

Mr. HUBBELL. But none of them were delivered to the White House.

Senator HATCH. Just two more answers. You say "I don't believe any of those files"—the question was:

Question: What I'm trying to do, and I'm not trying to be clever, probably couldn't be at all. I'm trying to figure out if you ever became aware that any part of those assembled files were kept in the possession of Mr. Foster in his White House office?
Answer: I don't believe any of those files were kept in his office. I was aware that Mr. Foster was working on some tax returns related to Whitewater, and I suspected that there were files, but I don't know.

So you just suspected there were files that were transferred?

Mr. HUBBELL. What I'm trying to say, Senator, is that the files that I had in my possession that were the campaign files never made their way to the White House. I was, as I said in my deposition, aware that Vince worked on Whitewater tax return issues, and I assumed that he had his own file, but they were not any of the campaign files. I never gave Vince any file that was from the campaign, and they never went to the White House. They all ended up in the hands of private counsel.

Senator HATCH. I think my time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

I'd like to take the witness back to July 20, 1993, and to talk about the circumstances in which you received information regarding Vince Foster's death. How were you informed of Vince Foster's passing?

Mr. HUBBELL. Senator, I was beeped at a restaurant. I went to a public phone, and I was told that Vince had been found dead and that it was an apparent suicide. I immediately left the restaurant and tried to get to a private phone so I could have a more substantive conversation.

Senator MOSELEY-BRAUN. You were told that by George Stephanopoulos?

Mr. HUBBELL. That's correct.

Senator MOSELEY-BRAUN. Was there any suggestion in that discussion that it was other than a suicide, that there may have been foul play involved?

Mr. HUBBELL. No. I said that can't be true. I said are you sure it's Vince? Are you sure it isn't his son? He said, Webb, it was Vince and it's an apparent suicide.

Senator MOSELEY-BRAUN. What did you do then, after you made the phone call?

Mr. HUBBELL. As I said, I went home, but I was locked out of my own house so I went to a neighbor's and called George back.

Senator MOSELEY-BRAUN. Then, according to your deposition, you got together with and advised two of Vince Foster's sisters?

Mr. HUBBELL. Yes. George said, Webb, the Park Police and David Watkins are on their way to Lisa's house. You need to get there as soon as possible. I asked George had anybody talked to Sheila? He said no, you need to tell them, and so Sheila's house is catty-cornered from mine, and I walked across the street. As it turned out, Sharon, his other sister, was visiting Sheila from Little Rock—I mean, Sharon, being from Little Rock, had come up that day, and so I told them both at Sheila's house. I told them what I had been told, and we all went to Lisa Foster's house afterwards.

Senator MOSELEY-BRAUN. You arrived at Mrs. Foster's—Lisa Foster's house, according to your deposition, about the same time that the Park Police did?

Mr. HUBBELL. That's correct.

Senator MOSELEY-BRAUN. Did you relate to her the news of her husband's death or did the Park Police?

Mr. HUBBELL. I asked to, but the Park Police said that was their job, and they had to do it.

Senator MOSELEY-BRAUN. Were you there when they did it?

Mr. HUBBELL. I was outside the door, but I was right behind them.

Senator MOSELEY-BRAUN. Did the Park Police advise her—in advising her of her husband's death, did they advise her it was a suicide or homicide? Do you have any recollection of that conversation?

Mr. HUBBELL. Senator, I only remembered Lisa's reaction. I don't think I could have—I didn't hear them—I heard Lisa's reaction.

Senator MOSELEY-BRAUN. I'm going to ask you, and I know this is touchy because this is a very sensitive area and a troubling personal area, but what was her reaction, that you recollect?

Mr. HUBBELL. She screamed and sat down on the stairs.

Senator MOSELEY-BRAUN. You talked with her thereafter?

Mr. HUBBELL. Yes, I think Eileen—we all went in. Eileen took her back upstairs and, then, a few minutes later, Eileen came down and said Lisa needs you to be with her.

Senator MOSELEY-BRAUN. When you went upstairs to talk with her, did you touch on anything having to do with Vince Foster's papers or effects or the like?

Mr. HUBBELL. Initially, we looked for a gun at some point. I mean, I'm sure we just sat and held each other for a while, but at some point we looked for a gun, then, later on, we looked for a note.

Senator MOSELEY-BRAUN. So your overarching concern that night was your concern for your grieving friends as opposed to having anything to do with the official responsibilities that Vince Foster might have had?

Mr. HUBBELL. Correct. I think we were in shock. I had concerns that people were going to presume it was a suicide before we knew what happened, but pretty quickly everybody was saying it was a suicide. It was on the news. My concerns were related to the Fosters' religion and what effect that would have on them, but we didn't think about official business.

Senator MOSELEY-BRAUN. These were close friends of yours?

Mr. HUBBELL. Very close friends.

Senator MOSELEY-BRAUN. How long had you known the Fosters?

Mr. HUBBELL. I knew Vince from the day I joined the Rose Firm in 1973, over 22 years. I worked closely with him. Lisa and Susie became close friends. We would travel together. We would play together, we grieved together. This is as close as you get, Senator.

Senator MOSELEY-BRAUN. To switch gears just a little bit from that night, this is not so much as to July 20, but in terms of your official responsibilities as Associate Attorney General, you supervised the Civil Division and, from your deposition, I'd like to just read this into the record. You supervised the Civil, Antitrust, Tax, Civil Rights and Environmental Divisions. You also supervised Immigration, Office of Legal Counsel, the Office of Information and Privacy, Community Relations Service, Office of U.S. Trustees, Office of Legislative Affairs, Public Affairs, Policy and Development.

Now, that description suggests that you did not have direct supervisory authority from the Department of Justice over the White House Counsel's Office; is that correct?

Mr. HUBBELL. Oh, no, no. The White House Counsel's Office is part of the President's Office and I have no authority over the White House Counsel.

Senator MOSELEY-BRAUN. But you had interactions with the White House Counsel's Office because of the informal relationship and previous personal friendship with Vince Foster?

Mr. HUBBELL. That's correct, and there was a lot of business between White House Counsel and the Justice Department.

Senator MOSELEY-BRAUN. Now, you've testified that you couldn't sleep that night and you made a call that next morning to see if the office had been secured. Did you feel that you had any official responsibility for securing the office of Vince Foster?

Mr. HUBBELL. No. Senator, I didn't mean to ever imply that anything I said that night or the next day had anything to do with any official capacity. I was calling as a friend to make sure something like the cleaning people didn't happen. I know, specifically when we met with the Park Police that morning, I advised everyone that I was there as a friend and representative of the family and was not there in any official capacity from the Justice Department.

Senator MOSELEY-BRAUN. When you later had a discussion that day with Mr. Nussbaum, you later had that conversation regarding what should happen in terms of the investigation based on your relationship as a friend, and not in any official capacity; is that correct?

Mr. HUBBELL. That is correct.

Senator MOSELEY-BRAUN. So what role, if any, did you assume again? I just want to bring this home. As Associate Attorney General, you did not assume any role in terms of the investigation?

Mr. HUBBELL. No, and Phil, on purpose, kept me out of it.

Senator MOSELEY-BRAUN. Which gets to the next question. Senator Shelby, in his questioning, talked about an agreement between Mr. Heymann and Mr. Nussbaum. Were you aware of any such agreement?

Mr. HUBBELL. I was only aware when I returned and Phil had said they had reached an agreement and that had changed.

Senator MOSELEY-BRAUN. I'm sorry, and then what?

Mr. HUBBELL. Then it had changed when they got there. But I had nothing to do with the agreement, don't know what the agreement was.

Senator MOSELEY-BRAUN. That was going to be my next question. Were you advised of what the agreement was and what the scope of it was?

Mr. HUBBELL. Phil may have said in general terms what he thought was going to happen or what the agreement was, but I really don't recall. I know Phil would.

Senator MOSELEY-BRAUN. The Park Police had advised you and others that this was an apparent suicide. Is it your impression that everyone who was involved with this matter at the outset had concurred or believed that this was a suicide?

Mr. HUBBELL. Yes, I believe the Park Policeman told me that that night, and when we met with the Park Police the next morning, they made it very clear that it was a suicide.

Senator MOSELEY-BRAUN. Was there any basis for questioning the Park Police's description of a suicide?

Mr. HUBBELL. No. I asked several questions that morning because I still couldn't believe it. If you knew Vince Foster, it was hard to believe, but after they went through what they discovered they said, Mr. Hubbell, this was a suicide, there's no doubt in our mind.

Senator MOSELEY-BRAUN. In your opinion, would the events following July 20, would those events have been different if it had been a homicide or if the Park Police had advised that it was a homicide instead of a suicide involved?

Mr. HUBBELL. I would have to believe they would be. I don't know exactly what the difference would be. I guess it depends on the circumstances, but I suspect that it would be.

Senator MOSELEY-BRAUN. In any event, with regard to the handling of information in Mr. Foster's office, that would not have been in the normal course of a suicide investigation. You had no legal responsibility, no ethical responsibility to get involved with trying to secure that office or anything in it based on what the Park Police had told you?

Mr. HUBBELL. That's correct.

Senator MOSELEY-BRAUN. So your interest in securing the office, the conversation the next day, was just based on an abundance of caution and because of your friendship?

Mr. HUBBELL. That's correct.

Senator MOSELEY-BRAUN. I have no further questions. Thank you.

The CHAIRMAN. Has the Senator completed her inquiry?

Senator MOSELEY-BRAUN. I have no further questions. Thank you.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

Mr. Hubbell, I've tried to take careful notes of some of the things you've said. Let me review them so that we can be sure I'm not misrepresenting your position and I'm going to ask you some questions that I think you do know the answer to, compared to those that have tried to get you to get into somebody else's mind.

I have written down you made the point that the files of the White House Counsel were in Vince Foster's office. In effect, they were Bernie Nussbaum's files every bit as much as they were Vince Foster's files. Do I have that right?

Mr. HUBBELL. I believe that is correct. I believe they belong to the White House Counsel.

Senator BENNETT. You made the comment that in an investigation of this matter, that it's perfectly appropriate that someone with the stature of the White House Counsel should be the one to go in the office and investigate that. Do I have that right?

Mr. HUBBELL. I did say that.

Senator BENNETT. This was not your comment, but it's in the same vein as what the Senator from Massachusetts asked you about, whether or not the police should be allowed to "roam willy-nilly," his phrase, through an office and you said no, you didn't think that that would be appropriate. Do I——

Mr. HUBBELL. I said that, yes.

Senator BENNETT. Did I characterize that correctly? All right. In the background, then, of those statements, let me read to you from Mr. Nussbaum's deposition what happened that night. You've said, appropriately, you weren't there, you were, as you've indicated to Senator Moseley-Braun, with the family, but this is what happened there that night, according to Mr. Nussbaum.

Picking up on page 33 of his deposition, and I will not read every bit of it, but I believe I've got the essence of it.

I decided to go to my office to call members of my staff to try to reach some people to let them know what happened before the news became widespread. I recall walking from the residence directly to my office. The door was open. As I walked into the suite, I noticed a light on in Foster's office, and I turned to walk into Foster's office, seeing the light, and I saw Maggie Williams and Patsy Thomasson.

Question: What were they doing?

Answer: Maggie was sitting on a sofa crying and Patsy was sitting behind Vince's desk.

Question: Doing what?

Answer: Looking at the top of the desk. I said, what are you doing here, and Patsy said—Maggie didn't say anything—Patsy said, I'm looking to see if he left a note. I said, that occurred to me also on the way over, which it did. Indeed, I was going to go in and look for a note. I said, well, actually, that occurred to me, too, and Patsy also said—I said we just arrived. We're looking for a note. We just arrived. I'm looking for a note. I said, well, that occurred to me also, and I went over to stand next to her, and we looked on top of the desk, and we looked around, just sort of eyeballing the room. We opened a number of drawers in the desk. We saw nothing. There were a lot of papers on his desk and it ended. It concluded. That cursory search for the note ended. We were looking for something obvious. At least I was looking for something obvious, a letter on the desk to whom it may concern, designed to be found. We didn't see anything there. We chatted briefly about what a tragedy it was, and we got up and left together.

That's Mr. Nussbaum's description of what happened that night. This is an office where there are files of the White House Counsel. Someone of the stature of the White House Counsel is someone you suggest should be the one to be searching, the police should not be allowed to roam willy-nilly through that office, yet Mr. Nussbaum shows up and it never occurs to him to even suggest there's anything wrong with Patsy Thomasson sitting behind Mr. Foster's desk looking at the papers on his desk and ultimately opening the drawers in his desk.

Now, the question I have for you in that circumstance, and I think you are qualified to answer it, perhaps better than anybody, is who is Patsy Thomasson? Why would her presence be accepted by the White House Counsel as a normal matter of course in this circumstance, that it would never occur to him to even ask why she's there, other than to accept her statement she's there to look for a note, and he says I'll look with you, and together they go through the drawers of the desk of a man that, in your phrase, has the files of the White House Counsel in it? It's extraordinary to me that the White House Counsel accepted her presence in this fashion, but I don't know who she is. I don't know what her relationship to this thing is. You have the background with her in the cam-

paign. You had the background with her in this circumstance. Can you tell the Committee who Patsy Thomasson is?

Mr. HUBBELL. I know some parts of Patsy's background. I know she worked in the campaign. I know she was the Chairman of the Arkansas Highway Commission. I know she had worked for several Senators and Governors, and I know she worked in the campaign in the transition and was an Assistant to the President of the United States and the Chief Deputy to David Watkins, who was in charge of the building itself and getting the light bulbs changed, so to speak.

Senator BENNETT. Did she have a White House pass at the time she did this? Obviously she had a White House pass. Did she have a security clearance?

Mr. HUBBELL. I do not know. Somebody said she did not. I did not know that.

Senator BENNETT. You said she worked in the campaign. What did she do in the campaign?

Mr. HUBBELL. I think she worked for David in running the administration of the campaign, but I'm not sure. I did not have any dealings with Patsy during the campaign. I worked with others.

Senator BENNETT. So I was wrong in assuming you could shed some light. The Arkansas Highway Department doesn't help a whole lot in this context. Why would she be the logical first person to be in Vince Foster's office? Can you help us at all?

Mr. HUBBELL. It would be pure speculation, since she was David's Chief Deputy, that David may have called and said would you go look and see if there's a note on top of his desk. I don't know if that occurred. I don't have any idea, but I would think that she would be the one that David would call if David was going to give her any instruction, but I don't know what David did.

Senator BENNETT. So she was a member of the White House staff at this time?

Mr. HUBBELL. Oh, yes. I believe she was David's Chief Assistant.

Senator BENNETT. We will undoubtedly—we're going to have her there and we'll ask her that status, but I was hoping with your acquaintance with her during the campaign, you could shed some light on who she is.

Mr. HUBBELL. Very smart lady.

Senator BENNETT. All right. I'll accept that, but you haven't really helped very much to help us understand why she would be there and why the White House Counsel would accept her presence there as a clear matter of course not even to be questioned.

Mr. HUBBELL. I really can't help you. I'm sorry, Senator.

Senator BENNETT. I see. Thank you, Mr. Chairman. I'll yield.

The CHAIRMAN. Senator Faircloth, Senator Bennett is yielding some of his time to you. You may start your line of questioning, and then we'll move on.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Hubbell, when you left the Justice Department, you went to work for Michael Cardoza, a Washington attorney. Is this the same Michael Cardoza that's also the principal attorney in charge of raising money for President Clinton's legal defense fund set up to de-

fend himself from allegations of wrongdoing in the Whitewater scandal?

Mr. HUBBELL. Senator, I don't mean to split hairs with you, but I didn't work for Michael. Michael lent me an office after I left the Justice Department. Michael is, I believe, one of the trustees of the Clinton Defense Fund, but—I'm not trying to split hairs, but I didn't work for G. William Miller & Company. They lent me an office.

Senator FAIRCLOTH. So you did not raise money for President Clinton's legal defense fund.

Mr. HUBBELL. No, I did not.

Senator FAIRCLOTH. On the weekend before Mr. Foster died, did you go and stay with Michael Cardoza on the Eastern Shore of Maryland?

Mr. HUBBELL. Yes, I did.

Senator FAIRCLOTH. Was this trip planned several months in advance, or is it something that came up at the spur of the moment?

Mr. HUBBELL. Michael and his wife Carolyn invited my wife and myself to come to the Eastern Shore that weekend and it had been planned for several weeks before that. When I got back from a trip, Vince and I were supposed to have dinner Friday night. Vince told me that he had decided to get away and that he and Lisa were going to the Eastern Shore to stay—they had rented a hotel room on the Eastern Shore.

On Saturday when we got to Michael and Carolyn's house, we told Carolyn that Vince and Lisa were somewhere on the Eastern Shore. We located them, and Carolyn invited them to come over and play tennis and swim and have dinner with us, and they did. They went back to the place they were staying and then came back to Michael and Carolyn's on Sunday, and we played, played tennis and swam and ate crab.

The CHAIRMAN. Senator, I don't mean to interrupt you, but I would like to get to Senator Murray, and then we'll come back to you for your full 10 minutes. I defer to Senator Murray.

Senator SARBANES. Senator, I might just make the observation that the Eastern Shore of Maryland is a very restful place to visit.

Mr. HUBBELL. Sure was, Senator.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

Senator Moseley-Braun talked with you about how you heard about the suicide, going to the home, what occurred there, and the aura present there. Would it be fair to say that your principal concern on the night of July 20, 1993 was taking care of Mrs. Foster?

Mr. HUBBELL. Absolutely. Her and Sheila and the children.

Senator MURRAY. At some point were you aware the Park Police were there to interview Mrs. Foster?

Mr. HUBBELL. At some point the Park Police said they would like to stay if it was OK, and that they would like, if possible, if Lisa was up to it, to ask her a few questions.

Senator MURRAY. Were they in uniform or plainclothes?

Mr. HUBBELL. I really don't remember.

Senator MURRAY. How did you feel when they began to ask her questions? This is a woman who obviously had just learned of her husband's suicide. How did that make you feel?

Mr. HUBBELL. I guess, I guess you understand it, but it is very invasive at that time. I think you don't resent it, but you just, it sure seems like a hard thing to do, especially in this case it was—they were saying it was a suicide. I would have hoped they could, if they needed to ask her questions, they could do it at a different time. But they did, and nobody got angry with them or anything like that, but it was just—you'd like to share your grief only with the people you are close to at that time.

Senator MURRAY. I would assume that there's a feeling of protecting somebody from having to live through questioning at that time. They've already received enough——

Mr. HUBBELL. Yes, there is, and you are also—we were, I think, naturally concerned about Lisa's state of mind and her health in such a traumatic time. We were trying to get a doctor to come and help her.

Senator MURRAY. Are you aware of allegations that you pushed Cheryl Braun out of the way in the Foster home?

Mr. HUBBELL. I found out about them when I watched the hearings last year. That was the first time I'd ever heard that.

Senator MURRAY. Mr. Chairman, for the record, at this point I would like to submit a question I asked Cheryl Braun last year during these hearings, and her answer. It specifically is:

Question: So, from your perspective, do you feel that anyone was trying to obstruct you in trying to get information that night?
Answer: No, I would not say they were.

I would like that on the record at this time and I would yield the rest of my time to counsel.

Mr. BEN-VENISTE. Thank you, Senator Murray.

Mr. Hubbell, I'd like to turn back to some questions that Senator Hatch addressed to you with respect to issues of whether White House Counsel may, under certain circumstances, act either as personal attorney or have in its possession the personal, financial or other records of the President of the United States. In this regard, let me ask you if you can tell us who Roger Adams was in July 1993?

Mr. HUBBELL. Roger Adams, I believe, was a Deputy in the Criminal Division at the Justice Department and I think, by that time, had been detailed to be on the staff of Phil Heymann, the Deputy Attorney General.

Mr. BEN-VENISTE. Did you know that Mr. Adams was one of the two Justice Department high-ranking individuals who were present during the search of Mr. Foster's office on July 22, 1993?

Mr. HUBBELL. I think I learned that when I returned to Washington from Little Rock.

Mr. BEN-VENISTE. Did you know, sir, that Mr. Adams' responsibility at the Justice Department, among others, was to give ethics advice to lawyers in the Criminal Division at the Department of Justice?

Mr. HUBBELL. I was not aware of that.

Mr. BEN-VENISTE. That is contained in his deposition at page 14, Mr. Chairman.

Now, let me read, if I might, from Mr. Adams' deposition and see whether you agree with this position. At page 194 Mr. Adams says:

I might say that it doesn't surprise me a bit. There's a thin line between public business and private business. It does not offend me at all that the Counsel or Deputy Counsel to the President does work on some personal things of the President and First Lady. And then during the search, obviously, Bernie Nussbaum said that these are certain things that Vince Foster has been working on for the President and the First Lady.

He went on to say in response to this question at page 199:

Question: You indicated that you were not surprised a bit that there would be both public and private files in Mr. Foster's office; isn't that so?
Answer: I think what I said was I was not surprised a bit that he would be working on both public legal matters and personal legal matters of the President.
Question: And this is on the basis of your understanding of the practical function of the White House Counsel's Office?
Answer: Yes.

Now, does that comport with your understanding of the function of White House Counsel?

Mr. HUBBELL. It does. I think I've said, I believe, the President is in a unique position. I find it—it would almost be impossible for White House Counsel not to have some involvement in some personal matters for the President.

Mr. BEN-VENISTE. With respect to personal financial matters, could you explain, with respect to the official requirements of the Counsel's Office in assisting the President with various financial disclosure and other forms, why it would be likely that such personal financial matters and documents might be found in the Office of Counsel to the President?

Mr. HUBBELL. There are, as I think everybody knows, a lot of disclosure forms that have to be filed by governmental officials, and you want to make sure that those are done appropriately and properly. I don't know of any person in the world who is more scrutinized than the President of the United States, whether it's a Republican or a Democrat. Everything that—any public form, any filing is going to be gone over with a fine-tooth comb.

Mr. BEN-VENISTE. So, to bring closure on this particular issue, Mr. Adams was the individual at the Justice Department who is a senior person charged with providing ethics advice to lawyers at the Justice Department, essentially a lawyer teaching lawyers their ethical responsibility. Mr. Adams was a person, one of two, along with Mr. Margolis, who had been sent by Deputy Attorney General Philip Heymann to the Counsel's Office to participate in the search, and it was Mr. Adams' view that it did not surprise him a bit that personal financial records were in Vincent Foster's file.

Mr. HUBBELL. Doesn't surprise me, either.

Mr. BEN-VENISTE. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Hubbell, to just go back very briefly to the Eastern Shore weekend and then move on from that, why did you feel compelled to spend the weekend with Mr. Foster? You appeared very much to want to spend that weekend with him because of some shuffling of arrangements. Would you mind telling me why? Was there any special reason you wanted to?

Mr. HUBBELL. Vince and Lisa are my very, very good friends, and it was a wonderful place that we had been invited to be at. It had a tennis court, it had a swimming pool, the lake or the river is just wonderful, and I wanted to share that weekend with my good friend and relax. Our host, I believe it's—the property is actually owned by Carolyn's father. There were other guests; one was a tennis coach and he gave lessons to both Lisa and my wife.

Senator FAIRCLOTH. I thank you. Mr. Hubbell, Vince Foster was a lifelong friend of President Clinton's. I believe you testified they were in kindergarten together. Mr. Foster worked closely with Hillary Clinton at the Rose Law Firm and has been referred to as her mentor at the firm. Would you say that Mr. Foster had a very special relationship with the Clintons?

Mr. HUBBELL. He was a very close friend with both Mr. and Mrs. Clinton—President and Mrs. Clinton.

Senator FAIRCLOTH. Now, moving to the Monday evening following the weekend we referred to, you and the President were going to watch a movie in the White House, and the President called Vince Foster in his office to invite him to come join you in watching the movie; is that correct?

Mr. HUBBELL. I don't believe I was there when he invited Vince, but I believe he called him, and—I might have been there then. But I did watch a movie with the President that evening.

Senator FAIRCLOTH. Did you discuss Vince Foster that evening with the President? Was he discussed?

Mr. HUBBELL. I don't have any memory of that. It is certainly possible because it was supposed to be Vince and Bruce and the President and I. But I'll be honest, I only remember what the movie was.

Senator FAIRCLOTH. Did you specifically ask the President to call Vince Foster to come to view the movie?

Mr. HUBBELL. No, I did not.

Senator FAIRCLOTH. Were you surprised when Mr. Foster refused the President's invitation to come over to the White House?

Mr. HUBBELL. I was not surprised at that.

Senator FAIRCLOTH. Was that unusual? I would have thought that, normally, when the President calls, you come.

Mr. HUBBELL. It was unusual, but I was not surprised, say, as opposed to a Friday night or a weekend. It was a Monday night, and it was an unusual circumstance. It wasn't like there were a whole lot of people there to watch a movie. It was just a few of us.

Senator FAIRCLOTH. Shortly before his death, did Mr. Foster ever confide in you any strain in his relationship or any falling out with the Clintons?

Mr. HUBBELL. No, Senator.

Senator FAIRCLOTH. He did not. OK. Mr. Hubbell, as you know, Betsey Wright served as Bill Clinton's Chief of Staff when he was Governor of Arkansas from 1983 to 1989. Betsey Wright is one of the most loyal and trusted friends of Bill. Shortly after her good friend Bill Clinton was elected President, Betsey Wright moved to Washington and joined a high-priced Washington lobbying firm.

Mr. Hubbell, you had in your possession at the Rose Law Firm files labeled Madison and Whitewater that were collectively known as the Betsey files. You testified yesterday that you brought those

files with you to Washington, and you kept them at your house. Did Vince Foster ever review those files known as the Betsey files?

Mr. HUBBELL. No, he did not. He was aware they were in my house, but he never reviewed them.

Senator FAIRCLOTH. Mr. Hubbell, what documents were in those files that related specifically to the Whitewater Land Development Corporation or to Madison Guaranty?

Mr. HUBBELL. I did not review those files in detail. I do know that in those files were drafts of accounting reports that Jim Lyons had done during the campaign, and I believe there were some newspaper articles and questions submitted by Mr. Gerth. Those are the things that I remember were in the files.

Senator FAIRCLOTH. Was there anything in those files dealing with the First Lady's commodity trades in which she converted a $1,000 investment to a $100,000 profit? Was there anything dealing with that?

Mr. HUBBELL. In the campaign files, I do not know, sir.

Senator FAIRCLOTH. —in these so-called Betsey files, the Madison and Whitewater files?

Mr. HUBBELL. Maybe I can help you, Senator. There were more than Madison files collected by the campaign that were in my house. There were files on a number of issues. Included in those files was a file labeled Madison/Whitewater, I believe. In the Madison/Whitewater file I don't believe there was anything to do with commodities trading. I don't know if in the other boxes there was a file regarding commodities trading or not. I just don't know.

Senator FAIRCLOTH. Did Mrs. Clinton or any of her representatives ever make a request for any of the so-called Betsey files or these files?

Mr. HUBBELL. There was, at one time, a request for one file. I went to the files, retrieved them and delivered them to Mrs. Clinton's office.

Senator FAIRCLOTH. What request was that file?

Mr. HUBBELL. If you recall, Senator, in June 1993 there was a question raised in Parade Magazine whether the President had a half brother that had not been—he didn't know about. So they asked me to go to the file, and there was a file on the genealogy of the President's natural father, and that's the file I delivered to the Clintons, Mrs. Clinton's office.

Senator FAIRCLOTH. Why did the Clintons want to keep these files in a chain of custody with lawyers only?

Mr. HUBBELL. I can only speak for me as one of the lawyers who was advising the transition. There were already lawsuits being filed against Betsey and the Clintons that could be used as a fishing expedition for personal files of the Clintons. We wanted, to the extent those files contained attorney-client privileged materials, to protect that privilege and keep it in a chain of custody. That was my thinking, Senator. I can't speak for the other lawyers who were involved.

Senator FAIRCLOTH. Did you have any discussion at any time with the President or the First Lady or anyone else relating to the transfer of these files?

Mr. HUBBELL. I never had a discussion with the President or the First Lady about the files other than that I had taken them into my possession. I told the President that.

Senator FAIRCLOTH. Yesterday I believe you testified that David Kendall came to your house to get the so-called Betsey files. I believe earlier you said that you took the Betsey files to David Kendall. Would you clarify how the Betsey files got to David Kendall?

Mr. HUBBELL. Yes, I will. Once David was hired, I met with David. I did bring to him a few of the files that he asked for prior to that meeting. So I did deliver to David, on that day that I had a meeting with David, a few files. That Saturday David came with an employee of Williams & Connolly and removed all of the files from my house with me.

Senator FAIRCLOTH. So you delivered some and then he came and——

Mr. HUBBELL. I delivered a stack that may have been a couple of inches high of files that he had asked about, and then that weekend he came and got the——

Senator FAIRCLOTH. Got the remainder?

Mr. HUBBELL. Yes.

Senator FAIRCLOTH. Mr. Hubbell, in your deposition you said that Jim Blair was helping to, and I quote, "wrap up Whitewater."

Now, Jim Blair is General Counsel for Tyson Foods and, as you testified yesterday, one of the closest friends of the Clintons. Hillary Clinton has publicly stated that Jim Blair advised her on her commodity trades which resulted in her $100,000 profit. Jim Blair even spent the night of President Clinton's inauguration at the White House.

Mr. Hubbell, why was Jim Blair involved in wrapping up the Whitewater deal?

Mr. HUBBELL. Jim assisted in the campaign, as did his wife, and one of the issues that he worked on was Whitewater. He had volunteered, I believe, to negotiate the transfer of the Clintons' interest in Whitewater.

Senator FAIRCLOTH. Is that what we mean by "wrapping up Whitewater"?

Mr. HUBBELL. Yes, I believe the thought was that they would try to transfer it to Mr. McDougal and end the relationship.

Senator FAIRCLOTH. I thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator MURRAY. Mr. Chairman, may I just ask a question on scope, just for my clarification? Is the commodities trading issue within the scope of this Committee?

The CHAIRMAN. We are not looking into the commodities matter. We are looking into only those matters that are touched upon in the resolution and/or that come in as a related matter. I don't think the Senator was looking to go into that, but certainly there is nothing that precludes one from mentioning areas. To go into it, to examine it, that is not the scope of this Committee, nor do we intend to go into it. That certainly doesn't preclude somebody from identifying by saying so-and-so who was involved in X, Y and Z, because it is a complex picture, so Members will, at times, have the ability to do that. We are not going to look into the commodities matter.

Senator Sarbanes.

Senator SARBANES. I yield to Senator Simon. I should say the scope is very carefully spelled out in the resolution that was passed by the Senate and does not encompass that particular subject.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes and Mr. Chairman.

The good news, Mr. Hubbell, is you are getting toward the end. There's just a few summarizing questions. First, it's fairly clear that Bernie Nussbaum is developing into a heavy in this whole question period. You have testified that he was like a brother to Vince Foster, that he was a pallbearer at the funeral.

Bernie Nussbaum was in the position of protecting a client, the President, and protecting a friend, Vince Foster. Is it fair to say that he did those things very conscientiously, but perhaps in terms of public relations or handling a public office, he may not have been as adroit as he might have been?

Mr. HUBBELL. I want to say, first, that I have the greatest respect for Bernie's legal abilities and his loyalty. He became, in 6 months, one of Vince's closest friends. As I said, Bernie and Vince both referred to each other as brothers. We love Bernie; he loved Bernie, and Bernie loved Vince. So I hope as we think about Bernie's actions we don't forget that part of Bernie. He is a very lovable man himself. I think Bernie himself will say that he's not the best PR for himself. He's a protecting lawyer as he has been trained to do for many years.

Bernie is an open person. I mean, Bernie tends to go in one direction, but a lot of times I have seen Vince or myself sit down and say now, Bernie, let's talk about this, and Bernie is open to suggestions. But I don't think, I hate to hear the word that Bernie is becoming a heavy because I think Bernie always did what he thought was the best thing to do. I know I have made mistakes, and I can't judge. It's this Committee's job to say whether Bernie made a mistake or not. But I'd never doubt his heart.

Senator SIMON. As far as doing anything—and some mistakes were made—we didn't anticipate we were going to be here——

Mr. HUBBELL. No.

Senator SIMON. —in this hearing. As far as doing anything ethically or legally improper, you're not aware of Bernie Nussbaum doing anything like that?

Mr. HUBBELL. No, and I think Phil would have told me, Phil Heymann would have told me if he felt that way.

Senator SIMON. Then you—in your deposition on July 13th, you are asked:

Question: Now, I think as a point of reference, the question was really limited in time from the time of the election up to and including Mr. Foster's death.

Let me ask you if before that time the President or Mrs. Clinton, then Mr. and Mrs. Clinton, expressed to you any concerns about Whitewater Development Corporation, Madison Guaranty or the McDougals?

Then you, as a partial answer here, say:

Answer: I was aware that Mrs. Clinton wanted to get the records assembled, figure out what had happened with Whitewater and get it resolved.

Did Mrs. Clinton at any point ask you to do anything improper in connection with Whitewater?

Mr. HUBBELL. Oh, absolutely not. She never would do anything like that.

Senator SIMON. Did Mrs. Clinton at any point ask you to do anything improper on anything else?

Mr. HUBBELL. No, she did not.

Senator SIMON. Did President Clinton ask you at any point to do anything improper on Whitewater?

Mr. HUBBELL. No, Senator.

Senator SIMON. Did President Clinton ask you to do anything improper on anything else?

Mr. HUBBELL. No, Senator, and he never would.

Senator SIMON. Is it conceivable in your mind that either President Clinton or Mrs. Clinton would have asked Vince Foster to do anything improper?

Mr. HUBBELL. It is inconceivable that they would ask Vince to do anything improper.

Senator SIMON. If—because you were, as you've mentioned, a close friend of Vince Foster's—if either one had suggested something improper, you think Vince Foster would have told you about it?

Mr. HUBBELL. Yes, I believe Vince would have got on the phone with me immediately and said I need to talk to you about this, and I would know about it. But it's just inconceivable to me that they would have ever done that.

Senator SIMON. Finally—and then I will yield some time to our counsel if anything remains—you have testified that he was worried about the travel situation. At one point you say in your deposition, "He seems to have blown it out of proportion."

At another point you say:

> He was upset about, you know, The Wall Street Journal, the question mark and the paper and the editorials. And, after I had gone through four or five, you know, I had gotten to the point where I was joking about them. I was trying to get him not to be upset about them.

He was upset about the travel situation. Did he at any point indicate to you that he was upset about the Whitewater situation?

Mr. HUBBELL. Vince never raised with me Whitewater as a concern. He never raised it. He did raise the Travel Office. He did raise other issues, but Whitewater was never mentioned.

Senator SIMON. I thank you. I yield the balance of my time.

Mr. BEN-VENISTE. Thank you, Senator Simon.

Mr. Hubbell, I'd like to pursue some questions put to you by Senator Hatch earlier with respect to privilege and waiver of privilege. The question of waiver of privilege has come up, and I would like it if you could explain what you understand occurs if someone takes privileged matters, "someone" being an attorney, and discloses just a part of that in terms of whether there can be an argument that, having done so, he can no longer claim privilege for the balance of the material?

Mr. HUBBELL. My understanding is based on practicing in Arkansas, again, I have to tell you, and that is that there can be, under some circumstances, a limited disclosure and you don't waive the privilege. On the other basis, there can be inadvertent disclo-

sure and you do waive the privilege, but it usually relates to the issue.

Mr. BEN-VENISTE. It relates to the type of proceeding, if you're in a court proceeding, and whether there is a court order or written agreement with respect to a limited waiver; is that what you are——

Mr. HUBBELL. That's correct. Usually it's very difficult to talk about it in these terms because my experience, and I think most people's experience, is your dealing with discovery in a court proceeding where there are pretty straightforward rules and precedent. I'm hesitant to be an expert when I don't know if there is any precedent out there at all when it relates to executive privilege or attorney-client privilege and this Committee. I just, I—again, I refer everybody to the best lawyer I know on these issues, and that's Walter Dellinger.

Mr. BEN-VENISTE. I'm sure Mr. Dellinger appreciates that spot, and the comments you made are well deserved.

With respect to the practice of law in New York, I think you would be probably the first to say that an inadvertent or partial waiver of the privilege might be seized upon by others as waiving the entire privilege in any given situation.

Mr. HUBBELL. I hate to admit this, but even in Arkansas I've seen some lawyers jump on an inadvertent or partial disclosure and claim total waiver of the privilege.

Mr. BEN-VENISTE. So, when Bernie Nussbaum had put on his New York litigator's hat, in your view, this might be one of the things he was concerned about?

Mr. HUBBELL. I wouldn't be surprised if it wasn't.

Mr. BEN-VENISTE. Now, you were responsible for the matters in the Civil Division of the Justice Department; is that correct? Not the Criminal Division?

Mr. HUBBELL. That's correct, although the Civil Divisions, I have to be candid, each have a criminal component.

Mr. BEN-VENISTE. With respect to—I see my time is up. Thank you, Mr. Chairman. That's all right.

The CHAIRMAN. If counsel wants to conclude, I'll let you do that.

Mr. BEN-VENISTE. No, I'm finished. That's fine.

The CHAIRMAN. OK. Mr. Hubbell, I think one of the questions was put to you by Senator Simon about whether or not you discussed with Vince Foster any of his concerns over White- water, and you said no. Yet before you indicated there were discussions with respect to Whitewater, so you don't really mean that he had never spoken to you about Whitewater concerns?

Mr. HUBBELL. I hope I did not convey that we never talked about Whitewater.

The CHAIRMAN. That's the impression——

Mr. HUBBELL. I didn't mean to.

The CHAIRMAN. OK. I just wanted to clarify that.

Mr. HUBBELL. Let me try to clarify it. We talked about, in the transition, the transfer and getting it done, and we talked about the fact that he was doing the returns and the difficulty of obtaining documentation.

The CHAIRMAN. OK.

Mr. HUBBELL. But I——

The CHAIRMAN. All right. I just wanted to——

Senator SIMON. Mr. Chairman, in fairness, I asked the witness whether—I mentioned that he was upset about the Travel Office, and I asked whether he had been concerned, suggesting that he might be upset about Whitewater. Mr. Hubbell responded that he had not expressed concern on that.

The CHAIRMAN. Let me pursue that just very quickly. Did he express concern about the documentation in terms of—that was a concern, and you were aware that he was having difficulty in this area, weren't you?

Mr. HUBBELL. I guess where I'm trying to explain is yes, he had a concern, but when I'm talking—I believe he was raising it in the context of the things that I thought Vince had blown out of proportion, that being the privacy, the Travel Office, the picture in The Wall Street Journal and the question mark. Those seem to me—that Vince was—as now I see it, evidence of the disease he had. Those were the concerns——

The CHAIRMAN. Primary concerns that you were aware of that were deeply troubling him.

Mr. HUBBELL. Right, and what he talked to me about and I thought he had blown out of proportion.

The CHAIRMAN. But he did express to you that there was the problem of dealing with the accounting and whatnot on Whitewater; that was of a concern, not of the concern that we're talking about?

Mr. HUBBELL. Yes, I didn't mean to imply he never talked——

The CHAIRMAN. I just thought I'd clarify. Let me, if I might, refer you to the page of notes from Vince Foster's office dealing specifically with Whitewater. It touches on a number of things. It's DKSN 00236; Senator Mack referred to it yesterday. There is a portion that talks about if you did one thing it would open up a can of worms. If we go down to the bottom of the page, number 3, it says, "prior deduction of $48,000 price payment in 1980." Then, it says, "Colorado came up with a theory to justify, but it's shaky."

Mr. Lyons, during the campaign, did put out a report, is that not correct, dealing with Whitewater and what the investment was and what it was about, basically?

Mr. HUBBELL. Yes, he did.

The CHAIRMAN. Is it true that Mr. Lyons was also referred to as "Colorado"?

Mr. HUBBELL. I——

The CHAIRMAN. I mean, that's his—he comes from Colorado?

Mr. HUBBELL. That's the way I would read that note, whether it's Mr. Lyons or the accounting firm in Colorado that he used.

The CHAIRMAN. OK, but I mean—and he has been referred to as Colorado?

Mr. HUBBELL. Him personally?

The CHAIRMAN. Yes.

Mr. HUBBELL. I've never heard Jim——

The CHAIRMAN. You've never heard Jim—but it is safe to assume?

Mr. HUBBELL. I assume that's either Jim or the accounting firm he used.

The CHAIRMAN. Thank you. I want to yield up to 5 minutes to Senator Faircloth because he wants to finish a point.

Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Hubbell, this is a very important question and I want you to think, if you will, very carefully. When you were Associate Attorney General, were you aware on July 20, 1993, or any time before that, that the FBI or the U.S. Attorney in Little Rock was investigating David Hale?

Mr. HUBBELL. I believe that there was something in the paper in Little Rock during the campaign that said that David Hale was under some sort of investigation.

Senator DODD. Mr. Chairman, can I inquire, at this point, are we getting beyond the scope? I don't want to keep on raising it——

The CHAIRMAN. I'm going to permit the Senator and any Senator some latitude to see where it's going, and if it goes beyond the scope, then I will say it does. At this point in time, any Member and every Member has a right to refer to somebody for some kind of historical accuracy or picture. So I will ask the Senator to be careful as it relates to the scope. We're not going to go into the Hale matter, but certainly I believe there may be a connection.

I think I know, because the Senator raised the question yesterday—and I'm going to ask that the time be deducted for this, that we take out this time—that subject to connection, I think I know where he's going. He referred to certain documents and calls that went to Mr. Foster's office. If he's pursuing that, if he is, then he'd be perfectly all right in doing it. So let's see where he goes.

Senator DODD. I understand what you are saying, Mr. Chairman. There is certainly no desire——

The CHAIRMAN. I'll be very——

Senator DODD. There is no desire on anyone's part here——

The CHAIRMAN. To impede, I understand that.

Senator DODD. —to get into it. I don't want to.

The CHAIRMAN. We will watch the scope very carefully. I understand the Senator's concerns; I share them, but at this point I'm going to let him continue.

Senator DODD. I appreciate that, but I'm just looking for a process question, too, here, in a sense, beyond this. What happens is, obviously, we're in a very public forum here and things get said, and all of a sudden the fact after a decision is made is it's beyond the scope. All of a sudden we've gone into another area. Do you understand what I'm saying?

The CHAIRMAN. I will be mindful of that, and if my colleagues send me a note on it or want to raise it publicly, fine, but I'll be mindful of it. I'm going to let him continue at this point.

Senator DODD. Let me also, Mr. Chairman—let me inquire on the David Hale matter. Have we checked with the Independent Counsel? Is this a matter——

The CHAIRMAN. We are not going to pursue the matter of David Hale and/or what his involvement is. But certainly as it relates to whether or not there was a communication that may or may not have come from anyone to Vince Foster or—I mean, that would be something that is relevant. I don't know whether the Senator intends to pursue that, but I just use that by way of illustration. It

seems to me that that's probably likely. The Senator has never shared with me what questions he's going to raise; let me assure you of that. I'd like to know, but in any event, why don't we proceed, and we'll be mindful of that.

Senator SARBANES. Let me——

Senator FAIRCLOTH. Senator Dodd, let me briefly touch on that. We have filtered the questions with the resolution and if you look at Resolution 120 on page 6, and the paragraph B section 4, it says, "to make such findings of facts as are warranted and appropriate." We have filtered the questions to be appropriate or we wouldn't be asking them.

Senator SARBANES. Mr. Chairman, let me make——

Senator FAIRCLOTH. Appropriate——

The CHAIRMAN. Now, look. One at a time.

Senator Sarbanes.

Senator SARBANES. Let me just make this observation on that point. Resolution 120 set out the scope of the inquiry. We've been coordinating with the Independent Counsel as to what aspects are set out in the resolution the Committee could move ahead to examine. The one we, in effect—where they said it would not impede their inquiry was the treatment of the papers in Foster's office.

The CHAIRMAN. Correct.

Senator SARBANES. The other matters that are listed in the resolution on which hearings can be done, we've not yet reached because we've not yet reached that understanding with the Independent Counsel and those have been deferred over until the fall and further communication between us and the Independent Counsel.

So the focus of these hearings is how the papers in Foster's office were handled, and I think it's important to keep the focus there.

The other observation——

The CHAIRMAN. I concur with the Senator there, and that is my intent, to see to it that we stick to the issue. While I will permit certain latitude because—subject to connection if there is a connection that is not part of the criminal investigation as it relates to David Hale—he has pled guilty—I will permit that.

For example, was there a contact that was made known by X or Y—that aspect may be outside of the scope but would not preclude ascertaining if there was some kind of connection. If it goes further than that, I will rule it out.

Senator SARBANES. The other observation I might——

The CHAIRMAN. Now, in fairness to the Senator, I think I've set down—and I hope that I have responded in a manner which constitutes the area of governance of this Committee. At this time, I'd like to see that the Senator has his opportunity to proceed.

Senator SARBANES. Fine.

The CHAIRMAN. Then, if people want to raise or question why the Senator brings that up, they can do it on their time.

Senator SARBANES. Let me just make this final observation. This is our first witness. I think there is some 23 or 24 either witnesses or panels, and we've now virtually used up the second day of the scheduled hearing. So, if we don't keep the focus on and keep moving along, we're going to have a problem.

The CHAIRMAN. I'd like to do that.

Senator FAIRCLOTH. If nobody hinders the proceedings any more than I do, we'll move quickly.

Mr. Hubbell, I will briefly run through the question one more time. Were you, as Associate Attorney General, aware on or before July 20, 1993, that the FBI or the U.S. Attorney in Little Rock was investigating David Hale? Were you aware, by whatever method?

Mr. HUBBELL. As Associate Attorney General is how you asked the question; the answer is no. But during the campaign, I believe, there was a newspaper article that said Mr. Hale was under investigation. So I had read that in the paper, for whatever that's worth.

Senator FAIRCLOTH. Did you know a subpoena was issued to search the office of David Hale on July 20, 1993?

Mr. HUBBELL. Not until much later.

The CHAIRMAN. Senator, at this point I'm going to say that I think we're beginning to move into a different area. Those questions will be appropriate when it comes to looking into all of those aspects as it relates to Little Rock and whether or not there—and I don't want to be inflammatory or sensational, but all of the various matters laid out in the resolution that cover the Justice Department and its interaction in various events that it had to deal with, at this time——

Senator FAIRCLOTH. I was through pursuing that line, anyway.

The CHAIRMAN. OK. Do you have any other questions?

Senator FAIRCLOTH. Yes.

Mr. Hubbell, are you aware that anyone with the Rose Law Firm went to Vince Foster's home in Arkansas after his death and removed documents from Vince Foster's home?

Mr. HUBBELL. I don't believe that—I'm not aware of anything like that happening, no. Somebody else was living in the home at the time.

Senator FAIRCLOTH. Mr. Hubbell, you testified that Lisa Foster looked for a note in the Foster home the evening of Mr. Foster's death. During the course of your search, did you discover any documents relating to Whitewater, Madison or any other documents which were later removed to either the White House or to a private attorney?

Mr. HUBBELL. No, we did not.

Senator FAIRCLOTH. Mr. Hubbell, were you ever aware that the Park Police wanted the Justice Department to search their database for any connection between Vince Foster and the Bank of Credit and Commerce International, more commonly known as BCCI?

Mr. HUBBELL. I've never heard that, Senator.

Senator FAIRCLOTH. Did you have any responsibility for handling BCCI matters at the Justice Department, or do you know if Mr. Foster had done any work, either in private practice or while with the Government, related to BCCI?

Mr. HUBBELL. I recused on the BCCI matter. So I did not have any involvement in Justice on the BCCI matter.

Senator FAIRCLOTH. Do you have any knowledge whether there were BCCI documents in Mr. Foster's office?

Mr. HUBBELL. I have no idea. I don't know what documents were in Vince's office.

Senator FAIRCLOTH. Do you know a John Richardson who worked at the Justice Department?

Mr. HUBBELL. I know a John Richardson, but he does not work at the Justice Department, so I don't know—I mean, I know a John Richardson here in Washington, but he's a private attorney. I don't know a John Richardson at the Justice Department.

Senator FAIRCLOTH. Do you know who Susan Thomasson is?

Mr. HUBBELL. Thomases, yes, I do. She's an attorney in New York with the firm of Wilkie, Farr & Gallagher.

Senator FAIRCLOTH. Will you explain briefly her relationship to the President and First Lady as you know it?

Mr. HUBBELL. I believe that she and the First Lady went to college together. I know that she has been a longtime friend of both the President and First Lady, and she worked in the campaign and worked in the transition and, as far as I know, is still a very close friend of the First Lady and the President.

Senator FAIRCLOTH. Why would Vince Foster have been discussing Travelgate with Susan Thomases?

Mr. HUBBELL. I know what Susan has told me, and that is that Vince consulted with several private attorneys about the Travel Office, about whether they should hire independent counsel with regard to the hearings that were going to come up, and he wanted her evaluation of the Travel Office report done by the White House.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator Sarbanes, I believe that we have one other Senator who wants to ask some questions; he's not going to take 10 minutes. Senator Bennett, will you have any others? Aside from that, we are ready to wrap up this part of it. I make inquiry and certainly——

Senator SARBANES. I have a few questions that I put in. I think some of my colleagues may have some. Why don't I go ahead while they're considering the matter?

Mr. Hubbell, I want to clear up this questioning first from Senator Simon and then from Senator D'Amato. As I understood Senator Simon's question, it was whether you knew that Vince Foster was upset about Whitewater in the sense that that would have been a cause or a factor in his tragic death. You indicated, as I understand it, that that was not the case; is that correct?

Mr. HUBBELL. That's correct. He certainly never expressed any level of concern greater than that he was working on the matters, that——

Senator SARBANES. Concerning——

Mr. HUBBELL. "Concern" is a word that has a lot of meanings. What I'm trying to say in response to your question and Senator Simon's and Senator D'Amato's question is, as you look back on the things that Vince seemed to be upset about, Whitewater was not one of them. If that helps.

Senator SARBANES. I think that's clear. He was working it out as a problem, but that was in the normal line of business. In terms of the things he was upset about, that was not one of them, as you understood it.

Mr. HUBBELL. As he expressed to me.

Senator SARBANES. All right. Now, was your concern about closing the office the real worry that the cleaning people might remove

something that was relevant to understanding this entire situation?

Mr. HUBBELL. Yes, it was. I can imagine if we worked here today and somebody said the cleaning people had gone through and cleaned out all the waste baskets in the Counsel's Office that night, that that would be of concern to a lot of people. That was my concern that evening.

Senator SARBANES. I have no doubt about it. If the cleaning people had thrown out things, that would be a big focus around here, too.

Mr. HUBBELL. Yes.

Senator SARBANES. Something going amiss.

Mr. HUBBELL. Yes.

Senator SARBANES. When you told Bernie to stay out of the matter, was it you thought he was just too personally close to really have an objective view of things as he worked on it?

Mr. HUBBELL. I'd like to say that I gave this a lot of thought, but I didn't. I just had an instant reaction that Bernie ought to stay out of it. Vince was like a brother. I didn't really think about privileges, and I didn't know what the matter was. I didn't know what the Park Police were going to do, but I thought there wasn't any reason why Bernie couldn't stay out of it, and that way he wouldn't be criticized for being involved.

Senator SARBANES. Of course, at the time that he reviewed the files, which took place with the Park Police, the FBI and the Department of Justice all being present, you were weighing then questions of privilege and so forth. An obvious person to do that would be the Counsel. I mean, Vince Foster was a Deputy Counsel to Nussbaum, so if anyone knew about the work that was going on in the Deputy Counsel's Office, it would be the Counsel, would it not?

Mr. HUBBELL. Yes, I think I said—and, believe me, I know that Bernie can speak for himself—as you look at it today, I don't have a good answer of who could have done that but Bernie. I mean, I really don't have a good answer to that question especially with the time constraints. But that's just me being a lawyer, looking at it now, 2 years later.

Senator SARBANES. Of course, a lot of people at the time who were lawyers were not looking at this thing as lawyers; isn't that correct? They were really looking at it as humans, as individuals in a very tragic situation.

Mr. HUBBELL. I don't believe any of us were totally operating at 100 percent at that time, certainly. I'd be surprised if anybody was operating at 50 percent. We were in shock and riddled with guilt.

Senator SARBANES. I'll yield to counsel, Mr. Chairman.

Mr. BEN-VENISTE. Thank you, Senator.

Mr. Hubbell, did you know that at the time—on the night of July 20, 1993, the night of Mr. Foster's suicide, that by the time the people came into Vince Foster's office to look for a note, that the trash had already been collected by the cleaning personnel?

Mr. HUBBELL. No, I did not.

Mr. BEN-VENISTE. Did you know, sir, that it was staffers or senior staffers at the White House that night who thought to contact

the GSA cleaning people in order to try to retrieve the trash and that they were successful in doing so?

Mr. HUBBELL. I was not aware of that.

Mr. BEN-VENISTE. Now, with respect to matters of civil litigation, of which you are substantially familiar, when there is a privilege claim in a civil litigation and where documents have been requested by civil process, under those circumstances, is it fair to say that weeks go by where lawyers review the documents in an office and then make a list of the documents which are called for but which also have attached to them a claim of privilege?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. That's called a privilege log.

Mr. HUBBELL. That's the normal case in a big document case, yes.

Mr. BEN-VENISTE. Now, in circumstances here presented, where the investigators were looking for a note, a suicide note or some other evidence that would be relevant to the state of mind of Mr. Foster prior to his death, did you in any sense feel that the procedures similar to civil litigation, where weeks would be taken by a painstaking review of the documents, setting out a privileged log, would be appropriate when the request was can you help us find a suicide note or a related type of document?

Mr. HUBBELL. If that was the request, I don't think it could be done. I don't think the White House Counsel's Office at that time was equipped to do something like that.

Senator DODD. Can I ask you, if the counsel wouldn't mind, how long would it have taken, putting aside the issue of whether or not you could have done it, because I think this goes to the timing issue as the Park Police are trying to get in? The suggestion by Senator Bond was that, had he done that, that would have been a wiser way to go.

Yet, it at least appears to me—not having any exact idea of the documentation in that office, but presumably it was fairly voluminous—if a log were required to put that all together plus a review of whether or not there were certain documents that would be subject to privilege, it seems to me you are looking at more than a day or two before the Park Police would have been able to go in and do their job. Then I can imagine what this hearing would have been about. Am I right or wrong on that?

Mr. HUBBELL. I believe—I don't know what files were there, but if you assume any type of volume, it would have been a difficult and time-consuming procedure of days, just assuming that Bernie had the staff to do it. The White House Counsel's Office was not a civil litigation firm anymore. I mean, it was a White House Counsel, mainly lawyers, very few staff members, and it would have taken quite a long time.

Mr. BEN-VENISTE. May I finish with one final question?

As far as you knew, one of the things that most concerned and, indeed, upset the Park Police investigators was the timing issue, that they had not been able to review the materials as quickly and promptly as they had wished to. Is that fair to say?

Mr. HUBBELL. I really don't know the answer to what the Park Police were upset about.

Mr. BEN-VENISTE. If they were concerned about the promptness with which they would be able to examine relevant material, then interposing this kind of a procedure would have been further upsetting, I trust?

Mr. HUBBELL. That's logical, yes.

Mr. BEN-VENISTE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Mr. Chairman, I'll be as brief as I can.

Mr. Hubbell, it's obvious to me that it wasn't what the cleaning people would do, but it would be what Bernie Nussbaum and other people at the White House who were looking through the office there would pilfer or remove from the room. Those are the real concerns.

Now, obviously Mr. Nussbaum entered into an agreement with the Department of Justice to let the FBI and the Park Police continue their investigation of any motives and so forth we've talked about. Then, he had second thoughts about this. In other words, he obviously was playing for more time or whatever they were doing, God only knows. But at the same time that he would not let the FBI or the Park Police into the room at the White House, Patsy Thomasson——

Mr. HUBBELL. Thomasson, yes.

Senator SHELBY. —Thomasson was sitting at the desk looking through the files and so forth. What's her exact title down there at the White House?

Mr. HUBBELL. I really don't know her exact title. I believe she was David Watkins' Chief Deputy, but her official title, I really couldn't tell you.

Senator SHELBY. But do you know that she doesn't have a security clearance? I'm talking about national security clearance.

Mr. HUBBELL. I was not aware——

Senator SHELBY. That she didn't at that time?

Mr. HUBBELL. I was not aware of that.

Senator SHELBY. In other words, it was OK for her and others to go through files, but not the FBI or Park Police? Doesn't that seem strange to you as a number three person at the Justice Department, which the FBI comes under?

Mr. HUBBELL. Again, you are asking me to assume that she went through files, which I don't know——

Senator SHELBY. Let's assume that she did, that it's undisputed just for——

Senator SARBANES. It's not undisputed.

Senator SHELBY. Let's assume, then, for the sake of the question, that she was sitting at the desk and that she was looking for a note or other relevant things. Is that strange to you?

Mr. HUBBELL. It is not strange to me that Patsy would have gone and looked for a note. I think that's a normal human reaction. It's just not strange to me. Or that David might have said go up, unlock the door and see if there's a note on the desk. That doesn't seem strange to me.

Senator SHELBY. What about Maggie Williams? Does it seem strange to you that Maggie Williams was down there in the office? What was she doing? I don't know, but she had access to the Dep-

uty White House Counsel's Office. No one kicked her out of the office, but they wouldn't let the FBI into the office.

Mr. HUBBELL. I am not surprised that Maggie, at a time of great grief, would go to the office where she had probably spent hours upon days with Vince. She and Vince were probably the closest lawyer-client personal relationship. I'm not surprised that a human reaction would be to go to that office and break down and cry.

Now, I don't know what she did, but I would not be surprised, and I—frankly, Maggie is a high-ranking official. She has the same rank as Bernie Nussbaum. So I, she has——

Senator SHELBY. Do you know if she has national security clearance?

Mr. HUBBELL. I do not know. I really don't.

Senator SHELBY. Would you be surprised if she did?

Mr. HUBBELL. I would be surprised if she did not.

Senator SHELBY. OK. But it doesn't surprise you at all that these people would go in this office, but they wouldn't let the FBI, the Federal Bureau of Investigation, go in the office, and you're the number three Associate Attorney General of the United States?

Mr. HUBBELL. Under some circumstances, I'm certain the FBI should be allowed to come in the office, yes. I don't know that they said you can't come in the office—I just don't know.

Senator SHELBY. You wouldn't be surprised if somebody said, like Mr. Nussbaum, stay out, would you?

Mr. HUBBELL. I would be surprised if they said stay out, but there may be a good reason. I just don't know what happened.

Senator SHELBY. What's the reason to keep people from knowing things that they didn't want to be ventilated publicly?

Mr. HUBBELL. I thought I gave you an example. If Vince had in his office a short list of Supreme Court candidates, and the pros and cons of that list, if I were a White House Counsel, I would not want to share that with an FBI agent. Based on my experience as Associate Attorney General, I would not want to share that. I would want to claim executive privilege on that document and not share it with anyone other than the people who should know what's in that document. I don't know if that's the case, but I'm trying to give you an example.

Senator SHELBY. I know that.

Mr. HUBBELL. That's the kind of information I wouldn't want broadcast all over town.

Senator SHELBY. But what would be wrong with inventorying things together and then saying this item is something, let me tell you what this is without going into the content?

Mr. HUBBELL. I think we've discussed that. I have no thought with that process, and I think you and I have discussed that. I'm just trying to give you an example that would give me great concern.

Senator SHELBY. You didn't see anything wrong with that process, did you, that I mentioned?

Mr. HUBBELL. No, I did not.

Senator SHELBY. Thank you.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Mr. Chairman, I will be brief. I just have a couple of quick questions that I wanted to ask to clear up the time.

What time did you arrive at the home of Vince Foster that night?

Mr. HUBBELL. I do not know. I assume it's between 9 and 10 p.m., but I don't know.

Senator GRAMS. I think, according to some testimony from the Park Police, it was around 10 p.m. when they arrived, and you arrived at the same time.

Mr. HUBBELL. Same time.

Senator GRAMS. There was a report, also, that you were on your cellular phone while you were at the——

Mr. HUBBELL. Yes.

Senator GRAMS. What was that?

Mr. HUBBELL. The Fosters only had one phone in the kitchen, and the house was quite crowded. It wasn't my cellular phone. I believe I borrowed David's, and Mack's when he got there, and then went out to Bill Kennedy's. There were a lot of arrangements that had to be made. I was responsible for contacting the funeral home in Little Rock. I was responsible or took responsibility for talking to several of the Fosters' pastors.

The phone was ringing off the wall with people from Little Rock wanting to know what in the world was going on, and Lisa was unable to talk to them; they would ask to talk to me. So I was on the phone, I'm sure, most of the night. I remember—I think David's battery wore down, Mack's battery wore down, and we were using the phone in Bill's car. But the phone was ringing off the wall.

Senator GRAMS. You also said you did not talk official business that night, that was the furthest thing from your mind at that moment?

Mr. HUBBELL. That's correct.

Senator GRAMS. Also, you said there were no conversations of what to do next on an official basis because you were really consumed in what you had to do that night; is that correct?

Mr. HUBBELL. Yes, we—immediately the question was how do we get Vince home, when can we get Vince home, what type of service can we have? All those horrible questions I hope people don't ever have to do, we had to do that evening.

Senator GRAMS. I'm going to ask Mr. Nussbaum the same question, but don't you find it odd that Bernie Nussbaum, who was with the President in the residence that night and left the President as he left to come to Vince Foster's home, that Bernie would decide to go to the office rather than coming to the home to console Vince Foster's family? Do you find it odd that the note or whatever was so paramount to the family that he decided to go from the President's residence to the office?

Mr. HUBBELL. I think if there was a note in Vince's office that it would—I think there wasn't a person in the world who that night didn't ask, Webb, have you found a note? So I think it would be logical, before Bernie left, to go into Vince's office and look for a note. I would find it unusual if nobody went in and looked and saw if there was a note on his desk or not.

Senator GRAMS. But you don't find it odd that that was his first decision? Rather than going to the residence with the President, that he decided to go to the office?

Mr. HUBBELL. I don't think any of us acted logically, so I don't—I can't attribute the right—if that was the right decision or not. I

can tell you that we all were in such shock that Vince would kill himself that we were saying why, why in the world, what was so bad? I mean, we were all guilty. That was the one day that I was in the White House that I didn't stop and see Vince. It's something I live with all the time. So we were all saying why? Is there a note? So I'm confident that Bernie would have gone and looked for a note. It just seems logical to me.

Senator GRAMS. I have no further questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. Just briefly, I think, for purposes of clarity here. In fact, Bernie Nussbaum did go to the Foster home, is that not true, that evening?

Mr. HUBBELL. I don't know, Senator. I just—I mean, I don't know. I don't know if he did or he didn't.

Senator DODD. In terms of going in the office, were there others, do you know about other staff or persons in the White House when he did go to the White House?

Mr. HUBBELL. I'm sorry?

Senator DODD. None of the White House staff were present in the White House when Mr. Nussbaum went up, back up to his office?

Mr. HUBBELL. I don't know that. I really don't know what Vince—I mean, Bernie did that night.

Senator DODD. I would just, Mr. Chairman, point out there is evidence—we'll hear it down the road—that Mr. Nussbaum went and he called, that he was to call White House personnel so they might hear it from him, rather than hear it over the broadcast news, and hear it from people who are pretty close to each other, which I find to be a relatively normal thing to do.

I mean, I certainly, that to me would be the way a person would react, rather than having people who work pretty closely to have to turn on their radios or televisions that night and hear it for the first time.

Mr. HUBBELL. Senator, we had the same concerns with people back in Arkansas, including Vince's mother, of having to make—you asked about telephone calls. We had to call people back in Arkansas. We didn't want them to hear it on TV. So I'm sure Bernie had the same concerns there. That's why, I'm sure, George called me. I would have hated to turn on the TV and seen Vince's picture there. I can imagine what that would do to the people in the White House Counsel's Office.

Senator DODD. Thank you very much. Thank you, Mr. Chairman.

Senator SARBANES. Senator Kerry.

Senator KERRY. Just a few questions, if I may. Let me also say it's interesting that we spent an awful lot of time finding out what has surprised you or what you have found strange, but the bottom line remains that, in terms of the handling of the documents, you had precious little involvement. In terms of finding facts here, many questions have been asked about extraneous issues which you were not firsthand with but which leave things hanging out there, not the least of which is this most recent round about Patsy Thomasson.

I mean, in the context of the evening, just to review the facts for 60 seconds, David Watkins was the first to arrive at the Foster home, and Patsy Thomasson worked for David Watkins. David Watkins, the evidence shows, asked if there was a note in the Foster office, and I believe he beeped Patsy Thomasson; is that correct, Mr. Hubbell?

Mr. HUBBELL. I don't know.

Senator KERRY. You don't even know that. The record shows that he beeped Patsy Thomasson, asked her to go to Foster's office to see if there was a note. There is nothing in the record that shows that she went there to look at files. In fact, three people were there: Bernie Nussbaum, Maggie Williams, and Patsy Thomasson, all of whom the testimony shows were looking for a note. They were there for about 10 minutes. But the way these questions are somehow posed as to what seems strange or what seems surprising, there's an inference there that somehow this is something out of the ordinary. I would like to just review very, very quickly—because we have another panel coming and this will be relevant.

When you arrived at the Foster home, and the testimony in answer to Senator Grams was it was somewhere in the vicinity of 10 p.m., the Park Police were arriving or had arrived at that time?

Mr. HUBBELL. I believe they were about to go in the door when I jumped out of the car and was right there.

Senator KERRY. So you saw them for the first time right at the door to the house itself?

Mr. HUBBELL. Yes.

Senator KERRY. They had not yet gone into the house.

Mr. HUBBELL. That's correct.

Senator KERRY. Who initiated a conversation with them?

Mr. HUBBELL. I believe I did.

Senator KERRY. Do you remember what that was?

Mr. HUBBELL. I believe I asked if I could notify——

Senator KERRY. Did you ask them who they were first? Did you know why they were there?

Mr. HUBBELL. I saw David, and I had been told by George Stephanopoulos that David and the Park Police were on their way to notify Lisa, so I just assumed they were Park Police.

Senator KERRY. I see. Was David there at the time?

Mr. HUBBELL. David Watkins? Yes.

Senator KERRY. He had not notified her?

Mr. HUBBELL. No, David had actually—I think he rode with the Park Police to the Foster——

Senator KERRY. So David was outside the house, too?

Mr. HUBBELL. Right.

Senator KERRY. Nobody had yet rung a doorbell, nobody had gone in?

Mr. HUBBELL. That's correct.

Senator KERRY. You made the inquiry of whom? Do you remember who, specifically, you asked?

Mr. HUBBELL. I do not. I believe there were—it was the male Park Policeman.

Senator KERRY. What prompted you to ask if you could make the notification?

Mr. HUBBELL. I just—human reaction that you'd want—if—I would think Lisa would want to hear it from me.

Senator KERRY. What specifically was the response to you?

Mr. HUBBELL. To the best of my recollection, it was something like this is their job and they must do it.

Senator KERRY. Did you question that?

Mr. HUBBELL. No, I did not. I understood.

Senator KERRY. But you watched from that location while that notification took place.

Mr. HUBBELL. That's correct.

Senator KERRY. When did the issue of his office and the question of law enforcement interest in the office first occur to you?

Mr. HUBBELL. I don't believe I ever had it occur to me of law enforcement interest in the office. I was concerned, as I said, that it be locked so that nothing was taken out like the trash. I didn't have a law enforcement hat on, and I wasn't thinking that this was any kind of a crime scene or thing of that sort. It was just lock the office and make sure we don't throw something away that might give us some insight into Vince's state of mind.

Senator KERRY. The next morning, the first thing you did was execute some personal steps to follow up on that concern; is that accurate?

Mr. HUBBELL. That's correct. I called Bill Burton to make sure that it had been done because I didn't, I still don't recall saying to Mack or David to do that that night. Others do, but I know I woke up in the middle of the night worrying about it, so the first thing I did was to call Bill the next morning, and he said Mack had already done it.

Senator KERRY. In the course of the evening preceding, in the course of the night or in the early morning prior to calling to have the office locked, you had no discussions with anybody about any files; is that correct?

Mr. HUBBELL. The subject of files never came up.

Senator KERRY. I yield my time to the counsel.

Senator SARBANES. Senator Moseley-Braun.

The CHAIRMAN. Certainly. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. I just have one little question, and this is just for clarity in the record.

To your knowledge, Mr. Hubbell, was the FBI ever denied their request for access to Vince Foster's office?

Mr. HUBBELL. I'm not aware of that, no.

Senator MOSELEY-BRAUN. So you're not aware of anybody saying "stay out" to the FBI?

Mr. HUBBELL. No, I'm not.

Senator MOSELEY-BRAUN. Thank you.

Senator SARBANES. Mr. Chairman, I think we've completed the questioning.

The CHAIRMAN. I think counsel has several questions, and then we can wrap it up.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

In your discussions with Mr. Heymann after you got back from Little Rock, in which he indicated to you that there had been an understanding or an agreement between the Department of Justice

and Mr. Nussbaum which had then been changed, was it your understanding that the change was one that Mr. Nussbaum made?

Mr. HUBBELL. That is my understanding, yes.

Mr. CHERTOFF. It was not a mutually agreed-upon change?

Mr. HUBBELL. That's my understanding.

Mr. CHERTOFF. You were also asked a series of questions by Mr. Ben-Veniste, who read from a deposition of Roger Adams, who is a Department of Justice lawyer. You knew Mr. Adams; correct?

Mr. HUBBELL. I did. Not for long, but I did know him, yes.

Mr. CHERTOFF. I want to make sure there is no misimpression. You're not telling us that Mr. Adams offered an opinion about the propriety of anything that was done in the White House concerning Counsel's Office work on personal documents, are you?

Mr. HUBBELL. I'm not aware one way or the other.

Mr. CHERTOFF. You have no knowledge that Mr. Adams was ever asked to render an opinion about whether it was proper for White House Counsel to work on any personal Presidential documents; correct?

Mr. HUBBELL. No, I'm almost sure he was not.

Mr. CHERTOFF. In fact, are you aware that Mr. Adams was one of the two Justice Department lawyers sent by the Deputy Attorney General to the White House on Thursday, July 22, 1993?

Mr. HUBBELL. Phil told me who went when I returned from Little Rock.

Mr. CHERTOFF. Was it your knowledge that Mr. Adams was one of the two lawyers that Mr. Heymann expected would be reviewing the documents initially to determine relevance and privilege?

Mr. HUBBELL. My understanding from Phil was that he had sent Dave Margolis and Roger Adams.

Mr. CHERTOFF. To do that job?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Was it your understanding from Philip Heymann that Mr. Nussbaum did not let them do that job?

Mr. HUBBELL. That's my understanding.

Mr. CHERTOFF. Finally, let me turn your attention to one issue that was raised, I think, by Mr. Ben-Veniste concerning normal civil litigation when you get a request for documents, and we talked about doing an inventory. In a situation where there's a subpoena in civil litigation, it's customary either to turn the documents over or to make a record of all the documents that you are withholding; correct?

Mr. HUBBELL. It's normal that if you're withholding a document—whether there's a subpoena or in just normal discovery, if you're withholding a document, you prepare what is called a privilege log, which gives some description of the document, that doesn't waive the privilege but gives some idea of what the document that is being withheld is.

Mr. CHERTOFF. The point of that is to have a record of every single document that is potentially relevant so that there can be no question afterwards whether someone has either turned over documents or has identified documents that are being withheld?

Mr. HUBBELL. That's the case in civil litigation, yes.

Mr. CHERTOFF. When a log or a record of documents is not maintained it becomes very difficult, if not impossible, after the fact ever

to demonstrate an accounting of all the documents in a particular office; correct?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. I'm done, Mr. Chairman. Thank you.

Senator SARBANES. Mr. Chairman, in the effort of having counsel illuminate this matter, I think Mr. Ben-Veniste ought to have a couple of followup questions.

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Just following up on civil litigation, when there is a subpoena, the subpoena calls for some item relevant to the litigation in question, and then there is an issue about whether, within the scope of what's called for, there is some privileged material; correct?

Mr. HUBBELL. That is correct.

Mr. BEN-VENISTE. In connection with the request made by the police to search Mr. Foster's office, the scope of what they were looking for was a suicide note or related information demonstrating Mr. Foster's state of mind; is that correct, sir?

Mr. HUBBELL. I assume, but I don't know that for sure because I wasn't privy to what the scope of the review was going to be.

Mr. BEN-VENISTE. Now, finally, with respect to what Mr. Chertoff has raised about Mr. Adams—and if there is any confusion on this record, Mr. Chairman, I'd like to make sure that it is removed. I was not suggesting that Mr. Adams was called upon to render an opinion about the appropriateness of legal counsel doing work on the private papers of the President in connection with his official duties. What I was referring to was the testimony of Mr. Adams that it did not offend him at all that Counsel or Deputy Counsel to the President did some work for the President or the First Lady. I hope that clarifies his testimony.

The CHAIRMAN. Certainly. It doesn't offend this Senator, understanding the nature of counsel and particular relationships, that, obviously, there is going to be some work overlapping, particularly as it relates to public disclosures, et cetera. I mean, when we go beyond, that may be a different matter. But, certainly, in our own experience making out financial disclosures, tell me where and when you should make a differentiation as it relates to personal and public. So I say we want to attempt to be fair and to be clear in this matter.

Senator, if there are any other——

Senator SARBANES. I just have a couple of comments. Mr. Chairman, I first want to say to Mr. Hubbell that I think he's been a forthcoming witness, and we appreciate that. I particularly appreciate him saying "I just don't know" when he doesn't know. That is important, and he was careful about that. So he gave us the best testimony that he could give us, and in areas where he was asked about other matters and he didn't know, he said he didn't know. I think, in its own way, that is forthcoming.

I also want to make, in that regard, this point about some other questions that are put. I know that the Chairman can't control, none of us can control, the questions that are put, but I do have to observe that some questions that were put contained premises that I think are just off the horizon, so to speak. The witness says I never heard of anything like that or I don't know anything about

something like that, but of course the question is put with a certain premise contained to the question.

I think it's very important that that be understood, that a question can be thrown out that makes some farfetched assumption as part of the question. In doing so, that seems to give it the appearance that there must be something there in order for that question to be asked. The witness says, I never heard anything like that or that's news to me or where did that come from, and that's the end of it. But the question with the premise has been put out on the table. I think it's very important that that be understood.

Now, Mr. Chairman, I assume probably we're going to take up the other panel tomorrow.

The CHAIRMAN. Yes. Senator Sarbanes and I have discussed whether or not we should continue. I think, in fairness to our Members and staff, that we will resume tomorrow with our next panel.

Let me, before I recess, say that I appreciate, Mr. Hubbell, your responsiveness. Obviously, there are many, many questions that you are not in a position to answer, and I think you shared with us, to the best of your ability and obviously your recollection, your true feelings. I will say this: I am perplexed and troubled with respect to the redactions. I'm going to ask that we put—I have a problem when we have a matter called Whitewater and, of course, nobody knows what redactions are, but, basically, I get a page and it just says Whitewater and it's taken out. Then we're told that there is a lawyer-client privilege.

At some point in time, and I would hope that we could get Mr. Kendall voluntarily to make these materials available either to the two counsels or, in some manner, to ascertain what these redactions are. I think, in fairness to everyone, if we want the story and want the information and these papers were all in Vince Foster's office, the Committee has a right to review them. I would hope that we could do that without the necessity of some kind of formal action. I am troubled by it because you can't, on one hand, say that we've made all of the information available and, then, on the other hand, raise the issue of attorney-client privilege.

So, in fairness to this Committee, in fairness to the American people in getting this information, I hope we could resolve that. I don't know whether we can. I'm going to speak—I don't know whether it's in the ability of the Committee if we're acting together to be able to get that. It may be something Mr. Kendall wants to or feels compelled to resist. But I hope we would have an opportunity to get that, and I——

Senator SARBANES. My understanding is that many of the redactions were made not on the basis of attorney-client privilege, but on the basis of relevancy.

The CHAIRMAN. Maybe there is a manner in which we could solve that because if they are not relevant, why then, we don't want them. I do not want——

Senator SARBANES. Why don't we explore that?

The CHAIRMAN. I would hope we could explore that.

Mr. Hubbell, we thank you. We stand in recess until tomorrow.

[Whereupon, at 1:15 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Thursday, July 20, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

7. Work with

Redacted

Systems:

EN – can't w. access but not documented yet

1900 gain

Cable Com

Trust

Firm Agents

3) [illegible] + deductions

$5800 — [illegible]

4) [illegible]

$4800

[illegible]

[illegible]

[illegible]

Redacted



DKSN000087

3. Whitewater

Redacted

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, JULY 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. This morning, we're going to hear from the panel of Park Police officers. But, before we do, I'd like to make two observations. Number one, we received a communication dated July 19 from the Office of Independent Counsel to Senator Sarbanes and myself in which, basically, the Independent Counsel indicates he's received the request from our Committee for the information that we requested as it relates to Maggie Williams and the polygraph test that may have been administered and various questions that may have been asked. I will summarize it by saying that he has denied our request, and we will make this letter available to the media at the present time. You will have a copy of it.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, could I observe that I very much regret this response by the Independent Counsel because I think the consequence of it is to make the work of this Committee more difficult, and it seemed to me that the request that had been put to him, first jointly by our counsel and then reinforced by all the Members of the Full Committee, was a very reasonable request. Unfortunately, we're now confronted with not receiving this cooperation, which I think would have been very helpful.

The CHAIRMAN. I concur that it could have been very helpful. Maybe it's because of the need to be, I think, extra cautious, but it will make our work more difficult.

Senator SARBANES. I understand our counsel tried to find an even lesser request to try to accommodate——

The CHAIRMAN. To review its scope, how extensive the questions were.

Senator SARBANES. Even that was declined.

The CHAIRMAN. That is the case, so it will make the job more difficult and put the Committee through more work, but we share that with you.

Senator FAIRCLOTH. Jim, would it be out of line to request from the White House that Ms. Williams voluntarily release the test?

The CHAIRMAN. No, no, because this apparently—and I say apparently—was a test administered by or with the supervision or authorization of the Independent Counsel, and the White House really does not have the ability to ask that of Maggie Williams, so it would not be the appropriate form to ask for relief. It really is the Independent Counsel, and his judgment. We will share that with you; I've asked for copies to be made to be distributed. But it will not be done. I think it's unfortunate.

Senator SARBANES. I think I ought to say she doesn't have the test.

Senator FAIRCLOTH. OK. That's what I was asking.

Senator SARBANES. The Independent Counsel has it, and we thought he should have provided it or helped to accommodate us, and he's not done that.

The CHAIRMAN. Unfortunately, you hear that a test was administered, but what was the basis, what were the questions, what was the scope; so it raises, in many cases, more questions than it answers when we hear that a test was administered. So we share that with you, and maybe he'll reconsider as time goes along.

I'd like to say, at the outset of today's hearings and before we hear from the Park Police, that I want to reemphasize and make something clear because I've had a number of people in the media raise this question to me as recently as this morning. Apparently—I would hope that our witnesses, particularly Major Hines—I want to assure him that this Committee does not intend and has no interest in opening up or reopening the question of the tragic death of Mr. Foster.

I see that is a concern of the Major in his statement. I've read the statement. We do not dispute in any way that it was anything but a suicide. I can understand the Park Police's feeling, as its characterization of the investigation, I think, took on certain nasty aspects, but we don't intend to look at that. After last summer's hearings, both the Majority and Minority reports concluded—I want to emphasize this—that the evidence overwhelmingly supports the Park Police's conclusion that Mr. Foster died of a self-inflicted wound. I am aware of nothing that undermines this conclusion.

I read Major Hines' statement this morning, and I understand and appreciate the Park Police frustration with all of the totally unfounded speculation that Mr. Foster was a victim of foul play. The Park Police have worked hard to do a professional job, and such unfortunate speculation simply slows the Foster family's healing process. It raises concerns among the professionals at the Park Police. It is unfair to characterize their investigation as having not been thorough and complete.

Last summer, at the request of Mr. Fiske, the Senate did not examine the very important question of the handling of the papers and documents, including the Whitewater papers, contained in Mr.

Foster's office. I want to reassure the Park Police that the Committee is now looking—and not only the Park Police, but everyone—we're now looking into the handling of the papers in Mr. Foster's office after his death and whether there was any interference with law enforcement review or whether law enforcement was impeded from doing its job in that connection.

So I would hope that settles that issue and that you would feel we are not attempting to replow a situation that should not be revisited.

With that——

Senator SARBANES. Mr. Chairman, before you swear in the panel, I'd like to follow up on a matter we were discussing after the hearing yesterday. It's my understanding that Michael Chertoff and Richard Ben-Veniste will seek to interact with Mr. Kendall, who's the private attorney for the Clintons, with respect to the materials that have been furnished. Now, as I understand it, the material redacted does not involve Whitewater or Madison, but I think a procedure whereby our counsel has an opportunity to interact with Mr. Kendall on that matter would be helpful.

At the end of the day and the discussions we had after the hearing, I think we reached that understanding, that they would seek to have that interchange over the weekend. Now, we have received an awful lot of documents from the White House which are official, and also documentation from Mr. Kendall as their private lawyer, but questions have been raised about some of the redactions, and I think we're endeavoring to find a process here by which our attorneys interacting with them can obtain some further understanding about how to handle that matter. Is that correct? Is that not correct?

The CHAIRMAN. At the conclusion of yesterday's public session, we spent some time discussing how to get this information or see whether it has any relevance to Whitewater. So we've asked counsel to attempt to work this out so that we would not be forced to consider other measures. I hope that we would be able to work this out in a cooperative manner.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, I'd like to underscore the comments made by Senator Sarbanes and yourself here. I think it is important that we try to reach an agreement. I think we can. My own view—and I don't have all the numbers in front of me, but I think it's important.

I think Members here will agree we've had a very cooperative White House on these matters. Literally thousands of documents and pages have been turned over. I think, again, looking at this thing stepping back, putting aside the particular issue here in front of us, there's an obvious—and would be by any Administration in the White House—trying to make sure, not just in their case, but precedent setting in terms of documents and what gets revealed and so forth.

That's a normal and expected response, but I'm impressed with the fact that the White House clearly does want to see us be able to work this out in a way so our counsel and someone can make decisions here so we're not left with the unanswered questions of

what's not on those papers, particularly if it's not relevant. If it's not relevant, we can say that and move on. I applaud the efforts here and hope by Tuesday we can work something out so this becomes a non-issue.

The CHAIRMAN. We have two capable counsels and, if it can be done, I'm sure they will be able to work this out. I hope we can do this and dispel the open questions. I call our first panel: Sergeant Cheryl Braun, Detective John Rolla, Major Robert Hines.

Sergeant Braun, good to see you again. We apologize for keeping you. I guess we thought we'd get you on 2 days ago, but I'm glad you're here. If you have an opening statement, we'd be pleased to take it.

Ms. BRAUN. Good morning, Chairman. I have a brief introduction.

Senator DODD. Could you bring that microphone a little closer to you, Sergeant? Thank you.

SWORN TESTIMONY OF CHERYL A. BRAUN SERGEANT, U.S. PARK POLICE

Ms. BRAUN. Good morning, Mr. Chairman and Members of the Committee. I am Sergeant Cheryl Braun with the U.S. Park Police. I have been a member of the U.S. Park Police for 10 years. During the course of my career, I was assigned for 6 years to the Baltimore/Washington Parkway as a patrol officer. My next assignment was just under 2 years in duration as a plainclothes investigator in the Criminal Investigations Branch.

In August 1993, I was promoted to the rank of sergeant and assigned to the Baltimore/Washington Parkway. In May 1994, I was assigned to the Crime and Violence Task Force, which worked in the Fifth District of Washington, DC. In October 1994, the Crime and Violence Task Force ended and I was reassigned to the Central District, which works the downtown and Mall area of Washington, DC. My current assignment is as a squad sergeant at the Central District.

I have a Bachelor of Arts degree in Criminal Justice from the University of Maryland. In 1985, I attended and completed the Prince George's County Police Academy and the Federal Law Enforcement Training Center for basic police training. In 1990, I attended the Federal Law Enforcement Training Center for the Criminal Investigators School. During my career, I received training on child abuse investigation, robbery and burglary investigation, a homicide seminar through the Harvard and Police Associates and other police patrol-related training. Thank you.

The CHAIRMAN. Detective Rolla.

SWORN TESTIMONY OF JOHN C. ROLLA DETECTIVE, U.S. PARK POLICE

Mr. ROLLA. How are you? This is just an introduction basically. My name is John C. Rolla. I joined the U.S. Park Police in 1984. I hold the rank of detective in the Criminal Investigations Branch, where I have been assigned since 1988. I have served in the Narcotics and Vice Unit, and I have been assigned to a Drug Enforcement Task Force for 2 years.

I received specialized training at the FBI Academy and have worked on a number of high-level drug conspiracy cases and smuggling operations. I was promoted to plainclothes investigator in 1990.

I have completed specialized training courses in narcotics investigation and criminal investigation at the Federal Law Enforcement Training Center in Glynco, Georgia, as well as homicide investigation courses throughout the Washington, DC Metropolitan area and Metro Dade Police Department in Florida.

Presently I am assigned to the Major Crimes Section of the U.S. Park Police Criminal Investigations Branch.

The CHAIRMAN. Major Hines.

SWORN TESTIMONY OF ROBERT H. HINES
MAJOR, U.S. PARK POLICE

Mr. HINES. Good morning, Chairman. First, I want to thank you for your comments in your opening statement about the Park Police and our investigation.

Mr. Chairman and Members of the Committee, I am Major Robert H. Hines. I joined the U.S. Park Police in 1967 after serving in the United States Marine Corps and the Maryland Army National Guard.

From 1985 to 1991, I was the Commander of the U.S. Park Police Criminal Investigations Branch. Since 1991, I have been the Commander of the Office of Inspectional Services, U.S. Park Police. In that capacity, I also serve as the Force Public Information Officer.

Mr. Chairman and Members of the Committee, I can only reiterate my desire to cooperate with this Committee in every possible way. Thank you.

The CHAIRMAN. Thank you, Major.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. Welcome everybody. It's evident you're all experienced in the area of law enforcement. Sergeant Braun, let me direct my attention to you first.

I'd like you to focus, please, on July 20, 1993 at around 6 p.m. Did you get a call to attend a scene of a violent death at that point in time?

Ms. BRAUN. Yes, I did.

Mr. CHERTOFF. Who did you go to the scene with?

Ms. BRAUN. I went to the scene with Investigator Rolla and Investigator Apt.

Mr. CHERTOFF. Did you find at the scene the body of Vincent Foster?

Ms. BRAUN. Yes, I did.

Mr. CHERTOFF. Approximately how long did you remain at the scene that evening?

Ms. BRAUN. Until approximately 8:30 in the evening.

Mr. CHERTOFF. You remained there with Detective Rolla?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Where did you go next?

Ms. BRAUN. After we left the scene, we went to the hospital briefly to retrieve some property.

Mr. CHERTOFF. After you were at the hospital, did you get a call to go pick somebody up?

Ms. BRAUN. Yes, we did.

Mr. CHERTOFF. Who was that?

Ms. BRAUN. We were requested to pick up Mr. David Watkins to allow him and his wife to assist us with the notification of the Foster family.

Mr. CHERTOFF. Did you go to pick up David Watkins?

Ms. BRAUN. Yes, sir.

Mr. CHERTOFF. Can you tell us how Mr. Watkins introduced himself to you, what he told you his position was?

Ms. BRAUN. It's been 2 years. I don't remember exactly how he introduced himself. It was fairly informal. He introduced himself as David Watkins, and he presented me with one of his business cards.

Mr. CHERTOFF. Did you learn from that business card that he was a senior official at the White House in charge of administration?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Where did you and Detective Rolla take Mr. Watkins?

Ms. BRAUN. We took Mr. Watkins to Mr. Foster's home in Georgetown.

Mr. CHERTOFF. Is it fair to say you arrived there sometime between 10 and 10:30 p.m.?

Ms. BRAUN. As my recollection serves me, it was around 10 p.m.

Mr. CHERTOFF. In the car, did you have any discussion with Mr. Watkins on the way to the Foster residence?

Ms. BRAUN. We had a brief conversation. I recall asking Mr. Watkins if he had any indications why Mr. Foster would have committed suicide, and at that point, the only thing that he could tell me was that he knew that Mr. Foster was upset over the Travelgate press that he had been getting.

Mr. CHERTOFF. Was there any discussion in the car with Mr. Watkins about whether there was a note that had been found at the scene in Fort Marcy Park?

Ms. BRAUN. No, I don't recall any conversation to that effect.

Mr. CHERTOFF. Now, what was the reason you wanted to go to the house with Detective Rolla?

Ms. BRAUN. We were responding to the Foster home to make the death notification to Mr. Foster's wife and relatives.

Mr. CHERTOFF. Typically, does that process of making a death notification also involve a certain investigative element?

Ms. BRAUN. Yes, it does.

Mr. CHERTOFF. What is that?

Ms. BRAUN. In a situation like that, it would be to look for information that would confirm that the suicide victim was despondent or had made prior attempts, anything that would help confirm our suspicions that it was, in fact, a suicide.

Mr. CHERTOFF. Now, you've said "suspicions" that it was a suicide. Recognizing that we're concerned with your state of mind as it was that night, not what we now know 2 years later—as of that night, had you concluded from an investigative standpoint that it was a suicide?

Ms. BRAUN. I was fairly certain that it was a suicide but, during the course of an investigation, you would look for other information just to confirm it.

Mr. CHERTOFF. So you still had to hold open the possibility of something else?

Ms. BRAUN. That's correct.

Mr. CHERTOFF. Can you describe very briefly what occurred, what the scene was at the Foster home when you arrived there with Mr. Watkins?

Ms. BRAUN. OK. Investigator Rolla and Mr. Watkins and myself were walking up to the Foster residence. As we were approaching the Foster residence, we noticed that what I now know was Mr. Hubbell and Sheila Anthony and several other Members of the White House Counsel and White House staff were coming down the sidewalk toward the house at the same time.

We then went up the steps to the house and knocked on the door and were let into the house by Laura Foster. We introduced ourselves to Laura Foster and she went and got her mother from upstairs in the bedroom area. As Mrs. Foster came down the stairs, Investigator Rolla approached Mrs. Foster and gave her the news that her husband was dead.

Mr. CHERTOFF. Understandably, everyone was very upset. During the course of your stay at the Foster home that night, did you have an opportunity to interview Ms. Foster?

Ms. BRAUN. I, personally, did not. I had trouble building rapport with Mrs. Foster. Investigator Rolla had a better time talking with Mrs. Foster.

Mr. CHERTOFF. How long do you think you stayed at the house that night?

Ms. BRAUN. We were there for approximately an hour, maybe just a little over an hour.

Mr. CHERTOFF. Were you there when the President arrived?

Ms. BRAUN. Yes, sir.

Mr. CHERTOFF. Now, toward the end of your stay at the house, did you come to the conclusion that the office that Mr. Foster occupied at the White House should be secured?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Would you tell us the reason you reached that conclusion?

Ms. BRAUN. We had not found a note at the immediate death scene or in Mr. Foster's vehicle. When we arrived at the home, in our brief interviews that we tried to make with the family, we did not get any information that would confirm that Mr. Foster was depressed or had even discussed the possibility of committing suicide with any of his friends or relatives.

So I felt that may be a place where Mr. Foster may have left a note, at his office, maybe for his co-workers to find rather than for his wife.

Mr. CHERTOFF. Was it your understanding at that point in time that Mr. Foster had been at the office at some point on July 20, 1993, during the day?

Ms. BRAUN. Yes.

Mr. CHERTOFF. So, as far as you knew, that might have been the last place that he had been before he went to the park and what happened at the park occurred; correct?

Ms. BRAUN. That's correct.

Mr. CHERTOFF. Now, can you tell us some of the reasons that you would want to look in the office and what you would be looking for, what you intended to be looking for in Mr. Foster's office?

Ms. BRAUN. I want to make it clear that I was never at Mr. Foster's office.

Mr. CHERTOFF. I understand that.

Ms. BRAUN. If it had been myself, I would have been looking for a note, basically, that says I couldn't go on any longer or something to the effect that he had committed suicide. I would be also looking for insurance papers, things to show that he had his life in order and was ready to hand over to his family. I would have been looking for a journal, a diary, an address book—not an address book but an appointment book with maybe appointments with psychiatrists or something like that.

I would have been looking for things that would have helped confirm that this was a suicide.

Mr. CHERTOFF. In other words, you'd be looking for anything that would shed light on his state of mind?

Ms. BRAUN. That's correct.

Mr. CHERTOFF. Would that also include any evidence of something that might have been troubling him?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Is it fair to say that in looking at the office, you would have been looking in particular for things in his own handwriting?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Would it also have been important to get a sense of the actual arrangement, physical arrangement of his papers in the office in terms of whether they were orderly or disorderly?

Ms. BRAUN. Yes, that would have been helpful. That would have let me know whether he had left the office in a hurry or if he had organized himself and put everything away.

Mr. CHERTOFF. Now, while you were at the Foster residence, did you have a conversation with David Watkins about securing Mr. Foster's office?

Ms. BRAUN. I had a brief conversation with Mr. Watkins as I was on my way out the door. Mr. Watkins made a request of the Park Police that we not release Mr. Foster's name to the media until they could get somebody to Hope, Arkansas to notify Mr. Watkins' family or his mother——

Mr. ROLLA. Foster.

Ms. BRAUN. I'm sorry, Mr. Foster's mother. I, in turn, asked that Mr. Watkins see that Mr. Foster's office was secured so that we could send somebody in the morning out to check his office.

Mr. CHERTOFF. What did Mr. Watkins say to you?

Ms. BRAUN. He said yes. He acknowledged my request. I don't remember what his exact words were, but he acknowledged my request.

Mr. CHERTOFF. You're quite certain that you made the request and he acknowledged it?

Ms. BRAUN. Yes.

Mr. CHERTOFF. In your conversation with Mr. Watkins, either at that point or at any earlier point, did he tell you that he had asked somebody to go into Mr. Foster's office and look for a suicide note?

Ms. BRAUN. No.

Mr. CHERTOFF. Is that something you would have wanted to know?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Did Mr. Watkins ever say to you that he was the wrong person to make the request of?

Ms. BRAUN. No.

Mr. CHERTOFF. Did Mr. Watkins say you ought to bring it up with the Secret Service?

Ms. BRAUN. No.

Mr. CHERTOFF. Did Mr. Watkins indicate to you in any way that he was unable to carry out the request you made to secure the office?

Ms. BRAUN. No.

Mr. CHERTOFF. Were you aware from any other source that night, July 20, 1993, that somebody had entered or was going to enter Mr. Foster's office on that night to look for a note?

Ms. BRAUN. No.

Mr. CHERTOFF. Is it fair to say you would have wanted someone from the Park Police there when that happened?

Ms. BRAUN. Yes.

Mr. CHERTOFF. Now, Detective Rolla, let me turn to you for a moment and, without repeating everything that went before, I want to focus your attention on this last part of the testimony involving the conversation with Mr. Watkins.

Were you present with Sergeant Braun during this conversation?

Mr. ROLLA. Yes, I was. I didn't hear the conversation. As we were leaving, she told me she asked Mr. Watkins to secure the office.

Mr. CHERTOFF. So you saw her talking briefly to Mr. Watkins?

Mr. ROLLA. Yeah, we had both talked to him during the night and, before we left, we exchanged business cards and she had talked to him. I just didn't hear this part of the conversation.

Mr. CHERTOFF. But, immediately thereafter, she told you she had made that request?

Mr. ROLLA. Yes, that's correct.

Mr. CHERTOFF. Did Mr. Watkins at any point during the night indicate to you that it was his intention to send someone into the White House that night to look for a suicide note?

Mr. ROLLA. No.

Mr. CHERTOFF. Major Hines, let me turn to you. I understand you were not there at the residence; is that correct?

Mr. HINES. That's correct.

Mr. CHERTOFF. Within several days, did you have occasion to talk to Sergeant Braun about the events of that night in the residence?

Mr. HINES. Some days after that, I did ask her did she request the office to be sealed, and she said she did.

Mr. CHERTOFF. Did she tell you who she had requested that of?

Mr. HINES. She told me Mr. Watkins.

Mr. CHERTOFF. Let me ask you, Major Hines, where were you that night, on July 20, 1993?

Mr. HINES. I was at my home in Columbia, Maryland.

Mr. CHERTOFF. Did you receive a call?

Mr. HINES. Yes, I did.

Mr. CHERTOFF. From whom?

Mr. HINES. I received a call from the field commander, Lieutenant Gavin. He informed me that a white male had been discovered at Fort Marcy Park, it was an apparent suicide, and he was identified as a White House employee. He then gave me the number of a Mr. Burton in the White House, and we left it at the consensus that I should call Mr. Burton and talk to him about the matter, and that I did.

Mr. CHERTOFF. Your understanding was Mr. Burton was a responsible person at the White House that you should contact?

Mr. HINES. That was my understanding.

Mr. CHERTOFF. Why was it that Lieutenant Gavin called you, if you know?

Mr. HINES. Because of my role as a public information officer, and he told me that this person was a high-level White House employee. He knew that it would be something of interest to the news media and was seeking my advice and letting me know, giving me a heads-up on it, that I should be aware.

Mr. CHERTOFF. Am I correct that it was approximately at 9:45 p.m. when you got that call?

Mr. HINES. That's correct.

Mr. CHERTOFF. Did you then call Mr. Burton at the White House?

Mr. HINES. Yes, I did.

Mr. CHERTOFF. Can you tell us generally what your conversation with him was?

Mr. HINES. The earlier conversation was when I expressed my sympathy; I knew they were in shock. Mr. Burton informed me of the relationship between the President and Mr. Foster, how they were very close, almost like brothers, and his job in the White House. We discussed at that time the process, basically, in a thumbnail sketch, of what the investigation would be, and I told him it was apparent from what had been reported to me that it was a suicide. Then we discussed the fact, and I did mention that we needed their full cooperation. We needed to go into the office and look for any kind of reasons or intention that Mr. Foster may have to commit suicide.

Mr. CHERTOFF. You said to Mr. Burton that "you" needed to go into the office, meaning the Park Police, not you personally?

Mr. HINES. Yes.

Mr. CHERTOFF. In order to look for evidence of what Mr. Foster's intentions had been; correct?

Mr. HINES. That's true.

Mr. CHERTOFF. You asked him to secure or lock the office in some way?

Mr. HINES. Yes, I did.

Mr. CHERTOFF. What did Mr. Burton say to you?

Mr. HINES. I don't recall his response to me, but I assumed that it was an affirmative response.

Mr. CHERTOFF. Did he object in any way to your request?

Mr. HINES. No, he did not.

Mr. CHERTOFF. Did he tell you that he was not the right person to whom the request should be directed?

Mr. HINES. No, he did not.

Mr. CHERTOFF. When you hung up the phone, was it your belief from your conversation with Mr. Burton that you had communicated with a responsible person at the White House who could take the steps necessary to secure the office?

Mr. HINES. Yes, it was. He identified himself as a Deputy Chief of Staff for the White House.

Mr. CHERTOFF. Now, can you give us some of the reasons in your mind that it was necessary to have police officials look in the office the next day? What kinds of things would be relevant?

Mr. HINES. We would want to find out if there's a suicide note. We would want to find out if there's anything there that he might have left that would give him a reason or show his state of mind. We'd want to check his records and see if he had financial problems, which is the reason many people commit suicide, items like this.

Mr. CHERTOFF. Would you want to know whether he was aware of or involved in any way with some wrongdoing?

Mr. HINES. We would if we found that out, yes.

Mr. CHERTOFF. You would be looking for something that would be evidence of motive?

Mr. HINES. We would. Any kind of evidence that might be motive or might lead us to believe that would contribute to his suicide.

Mr. CHERTOFF. Is it fair to say—again, in thinking about the kinds of documents that would be in an office—that you would be particularly interested in things in his own handwriting?

Mr. HINES. Things of his own handwriting would be of interest to us.

Mr. CHERTOFF. As opposed to, let's say, magazines or public documents or books?

Mr. HINES. True.

Mr. CHERTOFF. So, in your experience and your mind, in conducting a review of what was in the office, things in his own handwriting would be documents that would get particular attention?

Mr. HINES. It would be if it indicated that he was having problems in some way.

Mr. CHERTOFF. At any point in time in your conversation with Mr. Burton, did he indicate to you any knowledge that anyone was going to be entering the office of Mr. Foster that night?

Mr. HINES. No, he did not.

Mr. CHERTOFF. Did you have any information from any other source that night, on July 20, 1993, that someone either had been in Mr. Foster's office to look for a note or that someone wanted to go into Mr. Foster's office to look for a note?

Mr. HINES. No, I did not.

Mr. CHERTOFF. I take it that you would not have wanted a search of the office to occur that night without a Park Police officer being present?

Mr. HINES. That's true.

Mr. CHERTOFF. Did there come a time—let me direct this first to you, Sergeant Braun—that you eventually did learn on the night of July 20, 1993, somebody was in the office of Mr. Foster, one or more people looking for a suicide note?

Ms. BRAUN. It wasn't until some time afterwards.

Mr. CHERTOFF. Do you recall how you learned about it?

Ms. BRAUN. No, I don't.

Mr. CHERTOFF. What about you, Detective Rolla?

Mr. ROLLA. I think I read it in the newspaper.

Mr. CHERTOFF. What about you, Major Hines?

Mr. HINES. I read it in the newspaper.

Mr. CHERTOFF. Were any of you there at the White House the next day, on July 21, 1993, which was a Wednesday?

Ms. BRAUN. I was not.

Mr. ROLLA. I was not.

Mr. HINES. I was there.

Mr. CHERTOFF. At that point in time, Major Hines, was a request made by the Park Police to enter Mr. Foster's office to look for a note?

Mr. HINES. I was there at 10 a.m. with Chief Robert E. Langston to brief the White House staff on what we knew about Mr. Foster's suicide at that time. During the briefing, I did request that we would want to enter his office, and I explained, basically, the investigative process that we would go through to all those present. I did say that we would need to look into his office.

Mr. CHERTOFF. Do you remember who was present during that meeting?

Mr. HINES. There were several people present that I remember. The Chief Counsel was present, Mr. Nussbaum. Mr. Hubbell was present. Mr. Kennedy was present and Mr. Watkins was present.

Mr. CHERTOFF. In that conversation with them that morning, did they say you could go into the office that day and look for any relevant documents?

Mr. HINES. My impression was that they were going to cooperate with us in any way they could during our investigation.

Mr. CHERTOFF. During the balance of that day, did any Park Policeman set foot in Mr. Foster's office?

Mr. HINES. It's my understanding that no Park Policeman set foot in his office.

Mr. CHERTOFF. Let me keep your attention focused on that meeting of July 21, 1993 with Mr. Watkins and Mr. Nussbaum. In that meeting, did anybody indicate to you that morning that people had been through Mr. Foster's office the previous night shortly before midnight?

Mr. HINES. Not to my knowledge.

Mr. CHERTOFF. When did you first learn that had occurred?

Mr. HINES. Repeat the question.

Mr. CHERTOFF. When did you first learn that had occurred, that people had been in the office shortly before midnight?

Mr. HINES. When I read it in the paper.

Mr. CHERTOFF. I think I have no further questions. Mr. Chairman, if I could return my time.

The CHAIRMAN. Sergeant Braun, let me go over the night of July 20, 1993, just as it relates to one thing that you've testified to.

You're saying there came a point in time when you spoke to Mr. Watkins, who was in charge of management and administration of the White House, and told him of the necessity to secure or seal off the office; is that correct?

Ms. BRAUN. That's correct.

The CHAIRMAN. Do you recall how you said that, to the best of your recollection?

Ms. BRAUN. To the best of my recollection, I explained to him that the office would need to be closed up so that we could go through it the next day to look for a suicide note or evidence that would confirm the suicide.

The CHAIRMAN. How did he respond to you?

Ms. BRAUN. He seemed to understand what I was asking him and, like I said earlier, I do not remember what his exact words were, but he acknowledged that it would be done.

The CHAIRMAN. Now, Detective Rolla, you testified while you did not hear the conversation, that Sergeant Braun thereafter, as you were leaving or as you left or when you left, indicated to you the nature of her request to Mr. Watkins; is that correct?

Mr. ROLLA. Yes.

The CHAIRMAN. She had asked him to seal off the office; is that correct?

Mr. ROLLA. She asked him to secure the office because we knew the situation was that we weren't going to be able to be in there that night. Just to have things maintained, we wanted it secured until such time as higher officials could get in there and things could be gone through properly.

The CHAIRMAN. Major Hines, the next morning when you had a briefing, who attended? Was Mr. Hubbell there?

Mr. HINES. Mr. Hubbell was there.

The CHAIRMAN. Mr. Nussbaum?

Mr. HINES. Mr. Nussbaum was there; Mr. Watkins was there.

The CHAIRMAN. Mr. Watkins was there?

Mr. HINES. Mr. Kennedy was there and Mr. Stephanopoulos was there. There were several other people there that I don't remember.

The CHAIRMAN. Those are the people that you specifically recall?

Mr. HINES. Yes.

The CHAIRMAN. In addition to your advising them as to what you believed to be a suicide, from the initial investigation until you reached that conclusion, was there any other discussion about sealing the office or when you would be given access to the office?

Mr. HINES. There was no discussion of when we would be given access to the office.

The CHAIRMAN. Do you know when the Park Police first had access to the office?

Mr. HINES. It is my understanding on July 22, 1993, I believe we first had access to the office.

The CHAIRMAN. Mr. Chertoff has a question.

Mr. CHERTOFF. Something just came to mind; I want to be quite clear on it. Sergeant Braun, on the night of July 20, 1993, you left the Foster residence after the President had arrived?

Ms. BRAUN. That's correct.

Mr. CHERTOFF. That's when you had your conversation right before you left, with Mr. Watkins?

There's some independent evidence in the record that the President arrived around 11 p.m. I want to be quite clear that at that point in time when you talked to Mr. Watkins, he did not tell you that he had already made arrangements to have someone go into Mr. Foster's office and look for a note.

Ms. BRAUN. No, he did not tell me that.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman, and I know we have a short span of time that we're talking about and some of these questions might be similar in nature but, again, I'd like to go back over and to reiterate some of those.

Sergeant Braun, why would you consider Vince Foster's office in any way connected—it wasn't a crime scene—with the investigation? How important was that office to your thoughts right after the incident?

Ms. BRAUN. I'm not sure I understand what you mean when you say "right after."

Senator GRAMS. As you were following the course of your investigation, from the crime scene itself to the thoughts that Vince Foster's office should also be sealed to preserve its integrity as far as the investigation would go.

Ms. BRAUN. As you're going through a scene like this, you're going through a particular process. When you initially arrive, your concerns are with the immediate scene, and so we dealt with the immediate scene. Then I dealt with the car: I thought if we didn't find a note at the scene, then the car would be, possibly, the next logical place.

Having not found a note, then, in the car, the family becomes the next logical step in trying to confirm Mr. Foster's depression or state of mind. We didn't get any assistance with that. When we spoke with the family, there was no indication from the family that he had been suffering from depression. The only thing left, then, to examine was his place of business.

Senator GRAMS. The office was important in your estimation——

Ms. BRAUN. Yes.

Senator GRAMS. —immediately and early on in this investigation. Could you go into a little more detail about what you're trained to do when you approach such a crime scene?

Ms. BRAUN. How much detail?

Senator GRAMS. To secure the area at the crime scene itself and why your concerns were to seal the office.

Ms. BRAUN. Initially, at the crime scene, you want to preserve any evidence that's there, and so what I did in order to do that was to request that the main gate to the fort there be closed, and that would prevent any other people from coming into the area to contaminate it.

Senator GRAMS. You wanted to seal that part of the investigation?

Ms. BRAUN. Right. Once that was all taken care of, we had processed the area and gotten whatever evidence we felt we needed from that area, we left that to go to the family to do the death noti-

fication. From there, that becomes your more investigative end of it, more interviews with the family.

If Mr. Foster had been seeing a psychiatrist, we would have wanted to try to speak with the psychiatrist just to try to confirm any information they may have been able to provide within the realm of what they could tell us. Then, having not been able to get any information as to his state of mind from the family, no knowledge that they had found a note or anything, his place of business becomes the next logical place to go, as I said earlier. What we wanted to do was to try to preserve it in the condition that he left it.

Senator GRAMS. You didn't want the scene, basically, contaminated, either unintentionally or intentionally?

Ms. BRAUN. Right.

Senator GRAMS. You would consider, then, that his office would be a very important part of this investigation, and that's why you made the request early on, as already has been noted, to Mr. Watkins as you arrived at the home, asking him to make sure that——

Ms. BRAUN. That request was not made when we arrived. That was as we left.

Senator GRAMS. As you left. To me, it means that if you asked that the office be sealed, that you would want it locked; is that correct?

Ms. BRAUN. Yes.

Senator GRAMS. Now, you previously testified that there might be evidence in the office related to the decedent's state of mind?

Ms. BRAUN. Right.

Senator GRAMS. For example, you might be looking for what? You said a suicide note?

Ms. BRAUN. A suicide note, his appointment book indicating that he had an appointment with a psychiatrist or psychologist, a journal that indicates I've had umpty-nine bad days and I don't know if I can take it anymore, anything that would have helped show that he was really down in the dumps.

Senator GRAMS. When you found out during your investigation that this involved a lawyer's office, was there any other special precautions that you might have taken, as we've heard testimony on attorney-client privilege and things like that, but especially for a high-ranking Member of the Administration, would there have been additional precautions you would have asked for?

Ms. BRAUN. I just felt that I was dealing with the people who could take care of my request, and I didn't feel that anything other than trying to prevent people from going into the office was all that was necessary.

Senator GRAMS. Just to get the time again, you said that you made the request to Mr. Watkins about sealing the office as you left——

Ms. BRAUN. Right.

Senator GRAMS. —the home. So you had looked at the crime scene. You checked the car. From the car, the home was the next logical spot, and as you left the scene, which was about 10:45 in your estimation, you requested to Mr. Watkins that he seal the office?

Ms. BRAUN. Right.

Senator GRAMS. At that time he did not say his earlier question, that he might have already called someone. Did you notice him calling anyone while he was at the home with you?

Ms. BRAUN. Everybody was on the phone. They were—the phone was getting passed around. It was in constant use.

Senator GRAMS. But he did not tell you, again, that he had asked someone from the White House Administration to go to Vince Foster's office?

The CHAIRMAN. Senator, I'm wondering—for purposes of clarification, Detective, you testified the President got there about 11 p.m., and you left shortly thereafter; and it was as you were leaving, so it would have been closer to 11 p.m.?

Ms. BRAUN. That's correct. I think we ended up leaving closer to 11:10. I think the President got there just before 11 p.m.

The CHAIRMAN. It would have been between 11 and 11:10 when you spoke to Mr. Watkins and made your request known?

Ms. BRAUN. That's correct.

The CHAIRMAN. Just for clarification.

Senator GRAMS. For clarification, we noticed in yesterday's testimony that the security—the doors were opened at 10:42, which would have been at least 15 minutes before you had talked to Mr. Watkins.

Mr. Hines, what would you consider the definition to be if someone was asked to seal an office? What would you expect to happen after that request was made?

Mr. HINES. I would expect when we said seal the office, that the office would be closed, it would be secured and no one would be entering the office.

Senator GRAMS. According to the testimony or in conversations with Sergeant Braun, did you also assume that request had been made early on?

Mr. HINES. Yes, I had.

Senator GRAMS. Did you expect or assume that those steps had been taken?

Mr. HINES. I assumed that those steps had been taken.

Senator GRAMS. Did you in any way take any steps to follow up on that to make sure the office had been sealed yourself?

Mr. HINES. No, outside of my conversations with Mr. Burton. That's the only thing I did.

Senator GRAMS. So you were satisfied that those steps had been taken in those conversations that you had?

Mr. HINES. Yes, I was.

Senator GRAMS. Mr. Rolla, do you remember any thoughts you had on the matter? Do you recall discussing the need to seal the office with Sergeant Braun?

Mr. ROLLA. Yes, I did.

Senator GRAMS. What did you talk about, or how did you come to that conclusion as well?

Mr. ROLLA. First, let me say that there's no legal authority for us to tell them to seal and lock that office.

Senator GRAMS. Whose?

Mr. ROLLA. There's no legal authority.

Senator GRAMS. To tell who?

Mr. ROLLA. This was based on cooperation, which we would normally get in a death investigation. If it was a businessman or whatever, and we had to go to his office, we would ask them to please keep it the way it was, we would like to come over there. They can be there while we look through it. We're not looking for national secrets or corporate secrets. We're looking for something that says goodbye, cruel world, or something to determine the state of mind.

That's what we're looking for. That's what my thought was. When we asked—we talked about it later, and she mentioned right before we left that she had told David Watkins, asked him if he could seal the office, and he said yes, and that was basically it. We figured we were getting cooperation from a high-level Government official.

Senator GRAMS. You said you had no legal authority, but what you were doing was making a suggestion or what you would consider something that was a normal course of action?

Mr. ROLLA. It was a normal course of action. Like I said, we wanted to keep it preserved, preserve it the way it was, if at all possible, so we could go in there and find things the way they were.

Senator GRAMS. So, basically, trying to do your job.

Mr. ROLLA. Exactly.

Senator GRAMS. You expected that would be the same type of action that others would be taking.

Mr. ROLLA. The question was asked that the office be sealed, and the answer was that it would be. If they came up with a reason it couldn't be, that would be one thing. We felt we had cooperation that it would be done. That's all.

Senator GRAMS. I find it similar that you had the same ideas that the office would be one part that should be included in this investigation. Mr. Hubbell, one of his first thoughts was to make sure that the office was sealed, to protect the integrity of the office so it wouldn't be contaminated, and others should have been thinking along those same lines. Evidently, for one reason or another, those steps were not taken or followed.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Detective Rolla, what does your training tell you to do in a circumstance or a situation where you have come upon a violent death by apparent gunshot in terms of control of the area?

Mr. ROLLA. On any crime scene you're going to seal off a certain section of the area large enough to search and keep individuals out of that area.

Mr. BEN-VENISTE. So you want to secure the area and you want to take control of the situation?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. That's what your training teaches you?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. Now, you made every effort, as we have heard today, to take control of the situation at Fort Marcy Park to ensure

that the scene of Mr. Foster's death was not disturbed. Is that so, sir?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. On the basis of your review of the evidence at Fort Marcy Park, everything that you saw was consistent with an apparent suicide; is that correct?

Mr. ROLLA. That's correct, keeping an open mind to other options based on the physical evidence that was in front of us, it was all leading right to a suicide.

Mr. BEN-VENISTE. In fact, later that evening you and Sergeant Braun had advised the Foster family that this was an apparent suicide?

Mr. ROLLA. Yes, I did.

Mr. BEN-VENISTE. Do you recall that evening that Webster Hubbell asked to be allowed to break the news to Mrs. Foster, but that you declined to allow him to do that? I'll get into the reason, the good reason for that in a moment.

Mr. ROLLA. I have a good reason if that happened, but we never talked to him at all that night. The only contact we had with him was when he moved Investigator Braun out of the way from Cheryl Anthony.

Mr. BEN-VENISTE. We've heard testimony about that, and we'll get to that. You have no recollection of Mr. Hubbell asking to be permitted to break the news to Mrs. Foster that her husband was dead?

Mr. ROLLA. I was already at the front door when they were coming up to the first landing. I've never talked to them.

Mr. BEN-VENISTE. The reason why you needed to break the news and advise Mrs. Foster was because your manual and your training tells you that you are the appropriate person to do that?

Mr. ROLLA. We had, supposedly, close friends of the family with us, two friends, Mr. Watkins and his wife. We didn't want a whole bunch of people. Let me explain to you what happens when you make a death notification. Even if he did it, the question is going to be why, what, when, who, where, and they're going to have to come to us anyway. So what happens when you make a death notification is you break the news, very grievous, a period of intense mourning, grief, and then, whether there's shock, whatever, there's a period of information exchanged.

The family wants to know what happens and we tell them, and we get information from them. It may seem a little cold or heartless. We were not. We were very sensitive. It's probably the worst thing we have to do is tell someone their loved one is dead, for whatever reason.

Mr. BEN-VENISTE. You weren't doing this out of coldness or heartlessness, that is, being the ones to advise Mrs. Foster. You were doing it out of training and the instruction of your manual and the authorities that you looked to for guidance; correct?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. Did you tell Mrs. Foster that no suicide note had been found in Fort Marcy Park?

Mr. ROLLA. No, she never asked that question, and I didn't advise it.

Mr. BEN-VENISTE. Did you advise anyone there that evening that no note had been found?

Mr. ROLLA. I tell you, I don't know if anyone asked me that question. I don't remember. I may have told them.

Mr. BEN-VENISTE. If they asked you, you would have told them?

Mr. ROLLA. No, it was not a secret.

Mr. BEN-VENISTE. These people were grieving; they were looking to you for help as well as comfort from their friends and relatives; correct?

Mr. ROLLA. Yes; correct.

Mr. BEN-VENISTE. There wasn't any reason why you wouldn't tell them?

Mr. ROLLA. No, there would be no secret about it.

Mr. BEN-VENISTE. In fact, you've indicated that you did search for a suicide note at the scene of Mr. Foster's death?

Mr. ROLLA. We searched the scene, searched his person. His vehicle was on the scene.

Mr. BEN-VENISTE. You didn't search his person at the scene, did you?

Mr. ROLLA. After it was pronounced, we emptied his pockets. Yes, I did remove his personal property and search them.

Mr. BEN-VENISTE. At the scene or at the hospital?

Mr. ROLLA. At the scene. We went to the hospital because I happened to miss his car keys in his right front pants pocket.

Mr. BEN-VENISTE. So you made a cursory search of Mr. Foster's pants pockets, but you did not at that time locate the set of keys to the car?

Mr. ROLLA. That's correct. I neglected to turn his pocket inside out.

Mr. BEN-VENISTE. You did not find a note, clearly?

Mr. ROLLA. No, there's no note.

Mr. BEN-VENISTE. You looked in his suit coat, which was in the car, did you not?

Mr. ROLLA. Yes, I did.

Mr. BEN-VENISTE. You did not find any note in the suit coat?

Mr. ROLLA. No.

Mr. BEN-VENISTE. You looked in his car, did you not?

Mr. ROLLA. Yes.

Mr. BEN-VENISTE. You looked on the dashboard?

Mr. ROLLA. I searched the car, the trunk, the interior, the papers that were in the vehicle. There was no note.

Mr. BEN-VENISTE. You looked through the papers. You looked on the seats. Did you look under the seats?

Mr. ROLLA. Yes.

Mr. BEN-VENISTE. In the front and back?

Mr. ROLLA. Front and back.

Mr. BEN-VENISTE. Did you look under the carpet in the front?

Mr. ROLLA. Under the mats.

Mr. BEN-VENISTE. You looked under the mats. Did you yank up the carpet?

Mr. ROLLA. No, I didn't pull up the carpet.

Mr. BEN-VENISTE. Did you look under the hood?

Mr. ROLLA. No.

Mr. BEN-VENISTE. I mean, obviously you're not going to look in all of these places because your training teaches you that people who commit suicide and leave notes leave those notes where they will likely be discovered; is that correct?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. Not behind the file cabinet, not buried in some other material, but where people can find them. Is that so?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. Detective Braun—Sergeant Braun now. Congratulations on your promotion.

You were training Detective Rolla on the evening of July 20, 1993; correct?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. How long had you worked together?

Ms. BRAUN. Probably about a month.

Mr. BEN-VENISTE. You were the more experienced investigator on the scene; is that correct?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. Your experience told you that if someone was going to leave a suicide note, the likelihood is that it would be left in a place where it could be discovered?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. What is the point of having a report of investigation?

Ms. BRAUN. Our criminal reports?

Mr. BEN-VENISTE. Yes.

Ms. BRAUN. It is to document what occurred, what actions we took.

Mr. BEN-VENISTE. The idea is to memorialize for purposes of later referral the important things that have either been observed, taken into custody or done in connection with your investigation?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. So when you're asked a question today, what time did you depart Mr. Foster's home on the evening of July 20, 1993, you don't have to guess. You can look at your report and it says 23:10; correct?

Ms. BRAUN. Correct.

Mr. BEN-VENISTE. So you know that by writing a contemporaneous note and then typing it up in a report, that you will have satisfactory information for later reference or inquiry about an important event, that is, when you left the Foster home; correct?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. Now, at any point that evening—let me reiterate what I think you've already testified. You were in plain clothes rather than uniform?

Ms. BRAUN. Yes, sir.

Mr. BEN-VENISTE. The house began to fill up quickly with friends and relatives of the Foster family to provide solace and share in the grief; correct?

Ms. BRAUN. Yes.

Mr. BEN-VENISTE. At any point, do you recall making a request to search the Foster home?

Ms. BRAUN. No, we did not.

Mr. BEN-VENISTE. That was because you did not think it was appropriate to do so, I take it?

Ms. BRAUN. That's correct. That's their private place.

Mr. BEN-VENISTE. Nothing in your training tells you that in a suicide investigation you ought to attempt to search the home?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. Do you recall asking whether a suicide note had been found?

Ms. BRAUN. No, I don't recall asking that. We spoke to different individuals at the scene—I'm sorry, at the home, and we were trying to obtain information through communication with them regarding Mr. Foster's state of mind. Normally, those are things that spontaneously come out at a death notification. The family is usually very forthcoming with that kind of information.

Mr. BEN-VENISTE. Do you specifically recall asking Mrs. Foster whether a note had been found?

Ms. BRAUN. I did not communicate with Mrs. Foster. Investigator Rolla did.

Mr. BEN-VENISTE. Detective Rolla, did you specifically ask Mrs. Foster whether a note had been found?

Mr. ROLLA. No. What we asked, basically, was did they see this coming, was there any indication of depression or anything.

Mr. BEN-VENISTE. But I'm focusing on the note right now.

Mr. ROLLA. No, we didn't ask for a note.

Mr. BEN-VENISTE. Did you ask her to search for a note or help her search for a note?

Mr. ROLLA. We asked her to please look around. If she finds anything out of the ordinary, if she finds a note or anything, please give us a call.

Mr. BEN-VENISTE. So you did ask her?

Mr. ROLLA. Yes, we asked her.

Mr. BEN-VENISTE. You left it to Mrs. Foster to do the search at the house?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. It did not occur to you and it would have been extremely inappropriate to have requested that the house be sealed in some way as though it were the scene of Mr. Foster's violent death?

Mr. ROLLA. No, that would be ridiculous. We'd look for cooperation.

Mr. BEN-VENISTE. Now, there was a point where there was so many people in the house. The President had come. There were, literally, dozens of people who had come to the home spontaneously to comfort Mrs. Foster and Vincent Foster's two sisters, who were present there as well. Is that so?

Mr. ROLLA. There wasn't dozens. We had Mr. Watkins and his wife with us, then there was Mr. Hubbell and the two sisters and maybe one of their husbands. I think there were four or five other people besides the four of us that originally got there and, at that point, about 10:50 p.m. or somewhere around there, the President walked in with one Secret Service agent.

Mr. BEN-VENISTE. Just the President?

Ms. BRAUN. Yes.

Mr. ROLLA. Yeah, he was by himself.

Mr. BEN-VENISTE. You don't recall anyone else who came along?

Mr. ROLLA. I don't recall. He walked in, obviously a figure your eyes would turn to. He walked in——

Mr. BEN-VENISTE. You paid attention?

Mr. ROLLA. I see the President, and he immediately walked over to——

Mr. BEN-VENISTE. If other people arrived with the President or more or less at the same time, your attention was on the President of the United States having arrived?

Mr. ROLLA. I know he had only one Secret Service agent, which I thought was slim, but he had only one agent with him, and I don't believe anyone else was with him.

Mr. BEN-VENISTE. You don't know who was outside——

Mr. ROLLA. No.

Mr. BEN-VENISTE. —in terms of Secret Service protection?

Mr. ROLLA. No, I don't.

Mr. BEN-VENISTE. So you wouldn't make the assumption that the President traveled there with only one Secret Service agent?

Mr. ROLLA. He had one in the house. That's the only assumption I made.

Mr. BEN-VENISTE. Do you have any reason to believe that the number of people who began to come to the house and to console the Fosters was in any way some orchestrated attempt to interfere with your investigation?

Mr. ROLLA. No.

Mr. BEN-VENISTE. That would be absurd, wouldn't it?

Mr. ROLLA. Yes.

Mr. BEN-VENISTE. You could see how the expressions of grief and shock about this tragedy affected all of the people, including the President of the United States.

Mr. ROLLA. Obviously there was grief there, but there was also a very businesslike attitude between some people who maintained a businesslike appearance, constant telephone calls, constant work.

Mr. BEN-VENISTE. People had to be notified in Arkansas and around the country who knew Mr. Foster in the hope that they could be notified personally before they heard this news on the television. That wouldn't surprise you, would it?

Mr. ROLLA. No.

Mr. BEN-VENISTE. Now, Detective Rolla, you were not present when Sergeant Braun had her conversation with Mr. Watkins at the very end of your stay there?

Mr. ROLLA. I was standing next to her. We were on our way out the door. We decided it was time for us to go. I just didn't hear that statement.

Mr. BEN-VENISTE. Sergeant Braun, do you recall the exact words you used to Mr. Watkins regarding Mr. Foster's office?

Ms. BRAUN. No, I do not.

Mr. BEN-VENISTE. You don't know whether you said it would be a good idea if his office were locked or if his office were secured?

Ms. BRAUN. I think I probably said something to the effect—I made my request that the office be secured, and I assumed he understood what I meant.

Mr. BEN-VENISTE. You did not say to Mr. Watkins please ensure that no one enter the office; I want that communicated to everyone at the White House?

Ms. BRAUN. No, I don't think I was that detailed with him.

Mr. BEN-VENISTE. You did not say that, Mr. Rolla?

Mr. ROLLA. No, I did not.

Mr. BEN-VENISTE. Mr. Hines, you did not say that?

Mr. HINES. No, I did not.

Mr. BEN-VENISTE. With respect to what you expected, was that at some point after you communicated this request, the office would be locked up?

Ms. BRAUN. Yes, sir.

Mr. BEN-VENISTE. You left at 11:10.

Ms. BRAUN. Yes.

Mr. BEN-VENISTE. As has been established here, the office was indeed locked for the evening within a half hour of that request, but no one told you this; correct?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. Clearly there was no suggestion of putting some kind of evidence tape over the White House Counsel's suite or any other place in the White House to form a physical barrier that no one could pass?

Ms. BRAUN. That wouldn't be reasonable. That wouldn't be what we were looking for.

Mr. BEN-VENISTE. The Secret Service was present that evening with the President, and you know that they are responsible for the physical integrity of the White House as well as the President and his family?

Ms. BRAUN. Yes, sir.

Mr. BEN-VENISTE. If any drastic step was in your mind in terms of affecting the physical integrity of the White House or some portion of it, you knew that the Secret Service would be an appropriate agency to contact?

Ms. BRAUN. Yes.

Mr. BEN-VENISTE. Did either of you talk to Captain Hume or Detective Markland, the two police officers who reported to the White House the next day?

Mr. ROLLA. Yes.

Mr. BEN-VENISTE. On that evening, on the evening of July 20, 1993?

Ms. BRAUN. Not that evening.

Mr. BEN-VENISTE. Did you talk to them on July 21, 1993, at any point?

Ms. BRAUN. Yes, I spoke to Captain Hume.

Mr. BEN-VENISTE. Did you talk to Detective Markland?

Ms. BRAUN. No, I did not.

Mr. BEN-VENISTE. Major Hines, you indicated that you learned that Mr. Nussbaum and Ms. Williams and Ms. Thomasson entered the White House Counsel's Office on the evening of July 20, 1993 from the newspapers; is that correct?

Mr. HINES. Yes, sir.

Mr. BEN-VENISTE. Did you have any continuing supervisory role in this investigation?

Mr. HINES. No, sir, I did not. After the briefing, I had no supervisory role in the investigation.

Mr. BEN-VENISTE. We've gone through this question of reports. Let me ask you, Sergeant Braun and Detective Rolla, it is clear, is it not, that there is no reference to a request made of Mr. Watkins in your reports of July 20, 1993; isn't that so?

Mr. ROLLA. That's correct.

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. You've reviewed your reports carefully?

Ms. BRAUN. Yes.

Mr. BEN-VENISTE. They have no reference to any conversation with Mr. Watkins?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. Major Hines, let me ask that Mr. Markland's report be put on the screen for you. See if you can identify that. We can get you a hard copy of that. It's technology beyond my personal ability to work. I'm a hard copy kind of person, so if the report of Mr. Markland's can be provided to the panel——

Senator MOSELEY-BRAUN. Mr. Chairman——

Mr. BEN-VENISTE. It looks a little fuzzy to me.

Senator MOSELEY-BRAUN. Mr. Chairman, I understand there's a vote going on right now.

The CHAIRMAN. Yes, Senator. I intended to let Mr. Ben-Veniste have at least another 5 minutes and then we'll take a 5-minute break. We have about 10 minutes left on the vote.

Senator MOSELEY-BRAUN. All right. Thank you.

The CHAIRMAN. Provide the witness with a hard copy.

Mr. BEN-VENISTE. This has been identified as Exhibit 29 produced by the Park Police, and it is Detective Markland's report of July 21, 1993, which Detective Markland has testified he prepared on the night of July 21, 1993.

The CHAIRMAN. I didn't want to do this, I wanted to try to continue, but I think the recommendation of my colleague and friend, Senator Sarbanes, is that we take a brief break. I'm going to ask the time keeper to stop the timer right now, and we'll take a break. We'll go down and vote and as soon as Senator Sarbanes gets back, Mr. Ben-Veniste, you can continue.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. We'll take a brief break so we can vote and be back in 10 minutes.

[Recess.]

The CHAIRMAN. The Committee will resume. As we adjourned, counsel for the Minority was in the process of examining some documents. Mr. Ben-Veniste will return. We had 6 minutes on the clock. Please set it back and make it 10 minutes, because you were interrupted, so you'll have the additional time. If you need more, we will permit it.

Mr. BEN-VENISTE. Senator, hopefully I'll use less, but thank you.

Now, I haven't put this report of Detective Markland in front of you, Major Hines, for any purpose other than to establish that, according to Detective Markland's report, it is clear that on the morning of July 21, 1993 Mr. Nussbaum told Detective Markland that he, together with Maggie Williams and Patsy Thomasson, had conducted a brief search of the office to attempt to discover a note, but

that that search had proved uneventful. Do you see that in the report?

Mr. HINES. Yes, I do.

Mr. BEN-VENISTE. Do you recognize that as a regular Park Police report of investigation signed by Detective Markland?

Mr. HINES. Yes, I do.

Mr. BEN-VENISTE. Had you wished to follow the course of the investigation and be apprised of developments in it, you would have had access to this report?

Mr. HINES. I would have, but on Friday, July 23, 1993, I went on vacation and was absent the whole next week, so I didn't read any reports. That's why I read it first in the newspaper.

Mr. BEN-VENISTE. So that's a pretty good explanation for that. It wasn't because you were being inattentive to the developments in the investigation, you were just not available at that time to receive Detective Markland's report of July 21, 1993. But, clearly, Sergeant Braun and Detective Rolla, you have recognized that this is a report of Detective Markland who took over the investigation the following day; correct?

Mr. ROLLA. That's correct.

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. It is clear from that report that Mr. Nussbaum reported to Detective Markland and Captain Hume on July 21, 1993 that he, together with Patsy Thomasson and Margaret Williams, had conducted a brief search of Mr. Foster's office on the night of July 20, 1993 in the hope of discovering a note; is that correct?

Ms. BRAUN. Yes, that's correct.

Mr. BEN-VENISTE. Now, there are two inaccuracies there that have been clarified by Detective Markland. Obviously, the first is where he says Mr. Foster, he means Mr. Nussbaum. In the second, where he says that the search took place between 2200 and 2400 hours, he has corrected that in his testimony. So I don't wish to leave a false impression with those who are not familiar with the details of the 60 or so depositions we've taken in the course of preparation for these hearings.

In your briefing the morning of July 21, 1993, Major Hines, what did you wish to communicate to the White House?

Mr. HINES. The wish that Chief Langston and I wished to—correction. Our purpose was to visit the White House and brief them on what we knew about the suicide of Mr. Foster, to establish some protocol and let them know about what the investigative process we would go through would be.

Mr. BEN-VENISTE. Did you make any report of that briefing?

Mr. HINES. No, I did not.

Mr. BEN-VENISTE. To the best of your recollection, did you say that this was an apparent suicide?

Mr. HINES. Yes, I did.

Mr. BEN-VENISTE. Did you provide other details regarding the scene of Mr. Foster's death?

Mr. HINES. One person did ask me where he shot himself.

Mr. BEN-VENISTE. The Fort Marcy area was not a crime scene, it was the scene of an apparent suicide as far as what you were reporting to the White House that morning?

Mr. HINES. I reported that it was the scene of a suicide, but we treat all death investigations like a crime.

Mr. BEN-VENISTE. At some point you came to the conclusion—you, the Park Police—that, in fact, your initial conclusion was supported by evidence and the case was closed out as a suicide; is that fair to say?

Mr. HINES. Yes, it was.

Mr. BEN-VENISTE. Now, let's go to the question of the search warrant, which has come up here before. There was no suggestion, was there, that any attempt would be made to obtain a search warrant for Mr. Foster's office? Is that correct, Sergeant?

Ms. BRAUN. That's correct.

Mr. BEN-VENISTE. Detective?

Mr. ROLLA. Yeah, that's correct.

Mr. BEN-VENISTE. Major?

Mr. HINES. That's correct.

Mr. BEN-VENISTE. A search warrant would not have been appropriate or legally obtainable in your view, would it?

Mr. HINES. That's correct, without any evidence of a crime being committed.

Mr. BEN-VENISTE. Thank you, sir.

Now, you talked about the cooperation of individuals in assisting in your investigation, and you were told by Mr. Nussbaum and others that the White House would indeed cooperate; is that correct?

Mr. HINES. That was my understanding.

Mr. BEN-VENISTE. Who was it that brought Captain Hume and Detective Markland into the investigation?

Mr. HINES. The position that they occupy is in the Criminal Investigations Branch. Death investigations fall within the scope of the Criminal Investigations Branch. Captain Hume is the Assistant Commander of that branch and it's their normal business to investigate such things.

Mr. BEN-VENISTE. But who actually notified them that they ought to respond to the White House the following morning?

Mr. HINES. It would be a normal investigative procedure to respond to the place of employment of a person who committed suicide.

Mr. BEN-VENISTE. But somebody had to tell them. Do you know who?

Ms. BRAUN. I spoke to Captain Hume.

Mr. BEN-VENISTE. What time did you speak with Captain Hume?

Ms. BRAUN. I spoke to him at around 6:30 in the morning when he came into work.

Mr. BEN-VENISTE. You told him that he ought to respond to the White House that morning?

Ms. BRAUN. I briefed him on what the situation was, what the scene was like, what Investigator Rolla and I had done, and on what request had been made, what information we had found out and what still needed to be done.

Mr. BEN-VENISTE. Do you know that, according to the testimony of Captain Hume, he did not recall that you told him anything about making a request to lock the office?

Ms. BRAUN. No, I don't know that.

Mr. BEN-VENISTE. OK. Now, they responded, Hume and Markland, to the White House at 8:30 in the morning. They were escorted by Secret Service agents to the West Wing. They sat and waited.

What time was your briefing?

Mr. HINES. Our briefing was around 10 a.m.

Mr. BEN-VENISTE. Do you recall exactly what time it was, because there are differing recollections about what time? Is it reflected in any report?

Mr. HINES. No, it's not.

Mr. BEN-VENISTE. Might it have broken up as late as 11:30?

Mr. HINES. It could have been between 11 and 11:30.

Mr. BEN-VENISTE. OK. Mr. Nussbaum was with you?

Mr. HINES. Yes, he was.

Mr. BEN-VENISTE. So he couldn't be answering any questions or providing any assistance to Detective Markland and Captain Hume at that point; correct?

Mr. HINES. For clarity, are we talking about July 21, 1993?

Mr. BEN-VENISTE. July 21, 1993.

Mr. HINES. That's correct.

Mr. BEN-VENISTE. Captain Hume and Detective Markland are sitting off in the West Wing hoping to get started doing what they hoped to do while you were briefing Mr. Nussbaum in another part of the building?

Mr. HINES. That's correct.

Mr. BEN-VENISTE. You have learned since that they got upset because they were sitting out in the hallway cooling their heels when they thought they ought to be doing something?

Mr. HINES. Let me explain that I do not recollect that Captain Hume and Detective Markland were sitting in the West Wing at 8:30 in the morning on the morning of July 21, 1993. I met Detective Markland and Captain Hume as I was leaving the White House in the old West Executive Avenue parking lot, and I briefed them that we had just talked to some staff people and told them the protocol and what we would be expecting to do.

Mr. BEN-VENISTE. You don't recall whether they told you what time they had arrived at the West Wing that morning?

Mr. HINES. No, I don't recall.

Mr. BEN-VENISTE. OK. But, Sergeant Braun, you recall telling Captain Hume at 6:30 in the morning that he ought to respond to the White House?

Ms. BRAUN. I told him, yes, what we had done and what I thought still needed to be done.

Mr. BEN-VENISTE. So you wouldn't argue with the notion that during the time that you were briefing Mr. Nussbaum, and, indeed, even prior to that, Detective Markland and Captain Hume had thought that some arrangement had been made for them to talk to Mr. Nussbaum that same morning at that same time?

Mr. HINES. No, I would not.

Mr. BEN-VENISTE. Just a mix-up?

Mr. HINES. Yes, sir.

Mr. BEN-VENISTE. Honest mistake?

Mr. HINES. Yes.

Mr. BEN-VENISTE. Finally—I see that my time is——

The CHAIRMAN. Counsel, why don't you conclude this. I think that's the way we want to do it. I intend to give that flexibility to both sides.

Mr. BEN-VENISTE. I think I've pretty well covered where I want to go. Thank you.

The CHAIRMAN. You don't wish to conclude?

Mr. BEN-VENISTE. I think we're at a good point.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Major Hines, I believe—without trying to go over all the testimony and be redundant here—you were present at the briefing that was held by the Park Police at the White House the day after Mr. Foster's death; is that correct?

Mr. HINES. Yes, I was.

Senator SHELBY. Who else was present there at this briefing?

Mr. HINES. There were several people. As I've said, Mr. Nussbaum was there.

Senator SHELBY. Mr. Nussbaum was there.

Mr. HINES. Mr. Hubbell was there.

Senator SHELBY. Mr. Hubbell was there.

Mr. HINES. Mr. Watkins was there.

Senator SHELBY. Mr. Watkins was there.

Mr. HINES. Mr. Stephanopoulos was there.

Senator SHELBY. Stephanopoulos was there.

Mr. HINES. There was a host of other people there.

Senator SHELBY. Who was there, besides you, from the Park Police that you recall?

Mr. HINES. Chief Robert Langston.

Senator SHELBY. Were there any FBI agents there?

Mr. HINES. I did not notice any FBI agents.

Senator SHELBY. At that point?

Mr. HINES. At that point.

Senator SHELBY. Now, what was the purpose of the briefing, other than to tell them what your normal procedures were?

Mr. HINES. Just a courtesy call, a protocol call to tell them what our procedures would be and we needed their assistance——

Senator SHELBY. What you needed to do?

Mr. HINES. Yes.

Senator SHELBY. What did you tell them you needed to do?

Mr. HINES. That we wanted to go in and look at his office and we needed to interview his co-workers and determine his——

Senator SHELBY. You mean to search his office or look through his office?

Mr. HINES. Look through his office for any indication of his state of mind and did he leave a suicide note.

Senator SHELBY. Who was it that you were mainly talking to? Mr. Nussbaum?

Mr. HINES. It was a whole group of people. I was addressing a whole group.

Senator SHELBY. Was he the lead figure in the group, though?

Mr. HINES. He was—I couldn't characterize him as being the lead figure in the group.

Senator SHELBY. What did he say when you said that? Did he say it was OK?

Mr. HINES. I don't recall what he said or—I mean, I was addressing a whole group, so I didn't recall any specific——

Senator SHELBY. Did anybody object to what you were talking about, going in the office at that time to look through the office looking for anything that would help you in your investigation?

Mr. HINES. No one objected at that time.

Senator SHELBY. Did Mr. Stephanopoulos say basically, if you recall, that you should proceed as you would in any normal investigation?

Mr. HINES. To the best of my recollection, that's what he said.

Senator SHELBY. OK. About what time of the morning was this on July 21, 1993?

Mr. HINES. It was between 10 and 11 a.m.

Senator SHELBY. How long did you stay there?

Mr. HINES. I would think about 45 minutes or an hour.

Senator SHELBY. Did you proceed to go into the office?

Mr. HINES. No, I did not.

Senator SHELBY. What happened?

Mr. HINES. It would not be my job to go into the office.

Senator SHELBY. OK. Did you have people there that were ready to go into the office?

Mr. HINES. I met Captain Hume and Detective Markland in the parking lot.

Senator SHELBY. In the parking lot as you were leaving?

Mr. HINES. Yes, I did.

Senator SHELBY. What did you say to them, if anything?

Mr. HINES. I told them, basically, that we had just briefed members of the White House staff and that we explained the investigative process that we'd be going through and they were expecting members of our Criminal Investigations Branch to be there.

Senator SHELBY. Did anyone from the Park Police or the FBI that day, on July 21, 1993, go into Mr. Foster's office and look for evidence that would help you conclude your investigation?

Mr. HINES. Not to my knowledge.

Senator SHELBY. OK. Why didn't they go in there?

Mr. HINES. I do not know.

Senator SHELBY. Do you know if there was ever an agreement between the White House and the Justice Department setting out the parameters of a search of the office?

Mr. HINES. I did not know of such an agreement until later on July 21, 1993.

Senator SHELBY. You learned of it later?

Mr. HINES. I learned of that later.

Senator SHELBY. What time of the day did you learn of that?

Mr. HINES. It was probably in the afternoon of July 21, 1993.

Senator SHELBY. What was that agreement? What was the basis of that agreement?

Mr. HINES. I only know that they had established a protocol. What was included in that protocol for the examination of the office, I do not know.

Senator SHELBY. Who would know in your——

Mr. HINES. Captain Hume would probably know.

Senator SHELBY. Captain Hume. Would any of these people here at the table know?

Mr. HINES. No, they would not.

Senator SHELBY. But, in any event, you were not able to go in that office to complete your investigation that day?

Mr. HINES. On July 21, 1993, we were not in the office.

Senator SHELBY. Did people from the Park Police go in on the following day, July 22, 1993?

Mr. HINES. I believe, on July 22, 1993, they did go into the office.

Senator SHELBY. Was Mr. Nussbaum in the office then, along with others?

Mr. HINES. I was not present, but based on the knowledge that I have, yes, he was in the office.

Senator SHELBY. Were you able—the Park Police—to conduct a normal investigation at the White House office that day, what you would call normal procedure?

Mr. HINES. Any time you have a suicide of such a high member of the White House staff, I don't think any of that investigation would be normal.

Senator SHELBY. Because of the high rank——

Mr. HINES. Because of the high-ranking figure——

Senator SHELBY. —and where he worked?

Mr. HINES. —and where he worked, yes.

Senator SHELBY. Do you know who ultimately went into the office and conducted a search or tried to conduct a search from the Park Police or the FBI?

Mr. HINES. I understand there was a host of several people to go into the office and examine the office. However, they did not search or read any paper, to my knowledge, or any piece of evidence.

Senator SHELBY. Do you know from your knowledge that Mr. Nussbaum was in that office at the time—was one of the seven people, in other words, in the office when the investigation continued? Was Mr. Nussbaum one of the seven people in the office?

Mr. HINES. Yes, he was one of the people in the office.

Senator SHELBY. Did he go through documents or say that this is personal and this is something you can look at? How did he help orchestrate what was going on in the office?

Mr. HINES. Senator, I do not have any firsthand knowledge, only reading the reports and what was told to me by our investigators. As you described it, that's how he conducted the examination.

Senator SHELBY. Were you concerned about the inability of the Park Police and the FBI to get into that office to complete your investigation?

Mr. HINES. At that time I did have some concerns.

Senator SHELBY. What were those concerns? That this was unusual behavior?

Mr. HINES. There were concerns because we were there to look for a limited scope of the reasons that Vince Foster would take his own life. We had to determine did he have any motive or reason, the state of his mind, and, at the same time when we determined that, we could also rule out that there might have been foul play

involved. So it was at that time that I had concern on the next 2 days after his suicide.

Senator SHELBY. Did you have a conversation with Captain Hume sometime after July 22, 1993 regarding how the search was actually conducted in contradiction to the agreement?

Mr. HINES. I didn't know if it was in contradiction to an agreement, but Captain Hume and I did talk about the conduct of the search.

Senator SHELBY. What did he tell you?

Mr. HINES. He told me, as we explained, that Mr. Nussbaum handled all the papers and said this is private, this is public, this is lawyer work, and piled them up in stacks like that.

Senator SHELBY. How long did they stay in the office, there in Mr. Foster's office?

Mr. HINES. I do not recall.

Senator SHELBY. You don't know if it was hours or minutes or what, do you?

Mr. HINES. I think it was hours, but I don't recall.

Senator SHELBY. In other words, Mr. Hines, did Mr. Hume tell you that, basically, the FBI and the Park Police were not allowed to look at hardly anything?

Mr. HINES. That's what he told me.

Senator SHELBY. OK. In other words, it wasn't much of an examination of the office, was it?

Mr. HINES. From his perception, no.

Senator SHELBY. What's Mr. Hume's position with the Park Police?

Mr. HINES. Mr. Hume is the Assistant Commander of the Criminal Investigations Branch.

Senator SHELBY. Is he highly experienced in these types of investigations, criminal investigations or suicide investigations?

Mr. HINES. Yes, he is.

Senator SHELBY. Is he still with the Park Police?

Mr. HINES. Yes, he is.

Senator SHELBY. Does he have an excellent reputation as a police officer with the Park Police?

Mr. HINES. Yes, he does. He is a very good investigator.

Senator SHELBY. Do you know or have you heard of an FBI agent named Scott Salter?

Mr. HINES. Only in the reports that I've read.

Senator SHELBY. You've read about it and you've read a report where his name was mentioned?

Mr. HINES. Yes, I have.

Senator SHELBY. Do you know if he was accused by the White House Counsel, Mr. Cliff Sloan, of trying to peek at documents on the desk when he merely stood up to stretch during Mr. Nussbaum's search of the office?

Mr. HINES. Yes, the first I heard of that was when I read it in the paper.

Senator SHELBY. Do you hear many complaints like that dealing with the FBI?

Mr. HINES. No, I haven't.

Senator SHELBY. Would you characterize the interference or the withholding of people from that office for what, a day or so, unusual in an investigation of this sort?

Mr. HINES. I would characterize it as unusual in our normal experiences, but, again, it's unusual for us to go to the White House and make that type of investigation.

Senator SHELBY. Did you wonder if they had something to hide in those papers there?

Mr. HINES. I just wondered why we didn't have any cooperation because we were only looking for limited information about why Mr. Foster would commit suicide, was there anything on his mind that might tend to have him take his own life.

Senator SHELBY. But it was unusual procedure that was going on and it gave you reason to question what was going on, really?

Mr. HINES. That was our perception.

Senator SHELBY. OK. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you, Senator. I'll take a few minutes then turn to counsel.

First, let me thank all three of you. You've been before us before. You begin to wonder, I suppose, what your careers are. I suppose you spend a great deal of time just on this and there's a great deal of respect that all of us have for the jobs you have to do. Certainly, you probably didn't anticipate on that day in July two years ago that you'd be spending this much time going back and recounting events and details of those several days. So I thank you immensely for the time you dedicated to this and the effort that you've made to share with this Committee and others your recollections.

I understand, and I appreciate immensely your jobs and your training and what you've got to do. Obviously, none of you knew Mr. Foster, I presume, before, you didn't know the family. You get a report the afternoon of July 20, 1993, late afternoon, and you respond to it, Sergeant Braun and Investigator Rolla, and you are doing your job, in effect.

I wonder if you might, because I think it gets to the heart of what we're talking about here—you've got your job to do as investigators and we're trying to determine motivations and so forth, intents of people. The accusation is, in effect, by some that there was a corrupt intent here to somehow deprive investigators, you and others, of doing your job. That's the assumption some people have drawn. Others are saying they're not sure about that, it doesn't look that way necessarily. You are dealing with a traumatic event here and the people were acting in a rather human way given the circumstances. We're asking you, in a sense, to try to shed some light on this, and there will be those who will obviously try to get you to characterize these situations so that it reinforces the argument that there was some intent in that regard.

I wonder if you might be able to step back a little bit and let me begin with you, Sergeant Braun and Mr. Rolla. Are you an officer, Mr. Rolla? I didn't get your——

Mr. ROLLA. Detective.

Senator DODD. Detective. I'm sorry. Give us a feel for this. Obviously, you're being very analytical, your reports require you to do

so, just what the facts are, the times, the dates and what people say. I guess I should, first of all, begin by asking both of you, have you ever been involved in a suicide situation in the past?

Ms. BRAUN. Yes.

Senator DODD. You have, Sergeant?

Ms. BRAUN. Yes.

Senator DODD. So you've had some familiarity with how people react. You've had to notify a family?

Ms. BRAUN. Yes, I've done notifications.

Senator DODD. What normally happens? What are people like when you do that?

Ms. BRAUN. They're initially very upset, and then they are very inquisitive as to what happened, did the people suffer, things like that.

Senator DODD. That was the case here when you went to the Foster home and, Mr. Rolla, as you say—and I appreciate entirely your job there at that point, taught and trained to go in and have to break that news—that's the toughest thing you have to do. Did Mrs. Foster and her family react in a predictable way?

Mr. ROLLA. Very predictable. Traumatic.

Senator DODD. Cried?

Mr. ROLLA. Crying, screaming, collapsing.

Senator DODD. You were there how long? About an hour; is that right?

Mr. ROLLA. About an hour.

Senator DODD. Hour, hour and a half, something like that?

Ms. BRAUN. Hour, hour and 10 minutes.

Mr. ROLLA. We got there at 10 p.m. and we cleared at 11:10, according to reports.

Senator DODD. In the space of that time, it's a handful of people as you arrived and the crowd begins to gather, as I understand; is that correct?

Mr. ROLLA. No other people arrived, other than the President, once we originally got there that I'm aware of.

Senator DODD. So it was just, so just——

Ms. BRAUN. They arrived—the group arrived upon our heels of going up into the doorway, and that's the only group that came other than the President, who arrived at about 11 p.m.

Senator DODD. OK. Did you talk to each individual person there, however limited, for a few minutes or less than that?

Mr. ROLLA. Some people were not approachable. We tried to talk to different people. We talked to—I think we talked briefly to both sisters. I had more of a rapport with Mrs. Foster, so I talked to her. Cheryl talked to Laura, the daughter. The sons weren't home. We talked to Mr. Watkins. Other than that, we didn't talk to anyone else there.

Senator DODD. But their responses and actions were not out of the ordinary in your experience—maybe, again, I'll focus this on you, Ms. Braun—in your experience in dealing with that reluctance to talk, being grief stricken, highly emotional, this is a normal pattern, you were not necessarily surprised by how people were reacting?

Ms. BRAUN. I think we were, a little bit, in that it was so businesslike and in that nobody seemed—that this was a complete sur-

prise to everybody, and I don't think in a suicide that is a normal—a suicide isn't normally a complete surprise to the family. I feel that—and this is my own personal opinion—that there might have been a little bit of damage control going on, in that this could have possibly been an embarrassing situation for the White House and so they were reluctant to let us know that, yes, Mr. Foster had been depressed. Things could have been a lot simpler if they had just been up front with us from the beginning, yes, he was depressed, yes, I gave him the names of psychiatrists. We didn't get that information.

Senator DODD. That's a conclusion you drew as—have you done suicide investigations of high-ranking officials in other positions or people of note?

Ms. BRAUN. No, I have not.

Senator DODD. So there's nothing to compare that with necessarily. It's just a feeling——

Ms. BRAUN. As I said, it's my personal opinion.

Senator DODD. How about you, Mr. Rolla?

Mr. ROLLA. I agree with her. One of the things is we didn't want so many people there at one time. We believe in bringing a close friend, a pastor, somebody, a relative, to help comfort because we certainly didn't want anyone to be alone during this time. But, as I stated before, there comes a time after the initial grief—it's a shock or whatever—that there's information exchanged. They want to know things from us and we get things from them that help us. Depending on the type of case, it's a death investigation where expediency of the information is very important and whether—of course, this was all looking like a suicide, leaning that way from the very beginning, but it would have been—we needed to know was he receiving—was there anything out of the ordinary. Was he getting death threats or threatening letters or what. Again, was he depressed, was there some reason to believe that. Overall, I understand people in that—with everyone there, I think maybe there was reluctance on Mrs. Foster's part to talk to us maybe out of embarrassment, not wanting to talk in front of other people.

Senator DODD. Do you know what Mrs. Foster's religion is?

Mr. ROLLA. I believe they're Catholic.

Senator DODD. Were you aware of that at the time?

Ms. BRAUN. No.

Mr. ROLLA. No.

Senator DODD. Let me just mention that that can be a factor as well, given the whole notion of suicide and people of Catholic faith in terms of their views of suicide. Did it occur to you that that might be a part of the thinking as well?

Mr. ROLLA. I'm Catholic and if it's embarrass—it occurred to me that it might be embarrassing in front of all those other people. He killed himself. The family isn't going to deal with that with God; he is, as far as their religion is concerned. So in terms of embarrassment, maybe with several other people showing up at that time, maybe she felt less like talking to us about certain things. That's why I like not to go with so many people.

Senator DODD. You would understand that?

Mr. ROLLA. Yes.

Senator DODD. When you approached Mr. Watkins, Sergeant Braun, did you seek out Mr. Watkins or was this in terms of the exchange about securing the office?

Ms. BRAUN. Mr. Watkins became like a liaison with us. Since we were asked to contact him because he wanted to go with us to do the notification he fell into that role as being the liaison. So he was the person that I dealt directly with in making my request.

Senator DODD. Did you seek him out specifically as you were going out or did this come up in the conversation just as you were leaving? Was it an afterthought or was it something you went specifically to him to raise?

Ms. BRAUN. We had stopped to speak to him and to exchange our business cards with Mr. Watkins to let them know if they had any information that they should call us, if they came upon any information that they should call us, and then he made his request about us not releasing Mr. Foster's name to the media, and then I, in turn, made my request to have the office sealed so that we could go through it in the morning.

Senator DODD. Now, let me very quickly ask you here and then—you've used the words "seal," "secure," "lock," there may be others. These are terms of art in your business——

Ms. BRAUN. You are correct.

Senator DODD. —isn't that correct?

Ms. BRAUN. Yes.

Senator DODD. If someone says seal that scene, that crime scene, there are a certain amount of things you immediately think of?

Ms. BRAUN. Right.

Senator DODD. I suspect that goes to what Mr. Rolla was saying, that is, the tape around the area to protect whatever evidence and so forth. You, of course, are operating at this point preliminarily on the notion that this is probably a suicide; is that correct?

Ms. BRAUN. Yes, sir.

Senator DODD. So your reactions in terms of how you deal with these matters are different than if you had drawn a preliminary conclusion that this might have been a murder; correct?

Ms. BRAUN. Yes.

Senator DODD. So sealing has one set of notions involved in it and securing has another, I presume, or is it the same as sealing?

Ms. BRAUN. It's interchangeable. Hindsight is 20/20 and I've also, since I've become a supervisor, learned you have to ask a lot of questions and make sure people understand what your meaning is. If I had to do it again today, I would make sure that our meanings were the same.

Senator DODD. But you used the word "lock" earlier. What you are really getting at here is——

Ms. BRAUN. I think I used the word "closed."

Senator DODD. "Closed," "locked," what you are thinking about, I'm trying to get at that. Depending on what you are looking at, it's not—you're not—again, as Mr. Rolla said, this is more of a request, this is seeking cooperation?

Ms. BRAUN. Yes.

Senator DODD. You are not trying to protect evidence here, necessarily, in the sense you would be if this were a murder?

Ms. BRAUN. That's correct.

Senator DODD. It's just merely seeking cooperation in a sense?

Ms. BRAUN. Yes.

Senator DODD. So what you were really looking at here was that the room be closed, that there not be a lot of traffic in it, that there not be a lot of people going in and out and disrupting things and so forth potentially——

Ms. BRAUN. Yes.

Senator DODD. —isn't that what you are really getting at here?

Ms. BRAUN. Yes.

Senator DODD. Which is different than sealing, the notion—the word "seal" has been used over and over and over again. What you were driving at was something very different than sealing?

Ms. BRAUN. Yes, I wanted to keep the office intact, the way it was when Mr. Foster left it, and to keep people from rummaging through it.

Senator DODD. I see my time has expired here. I don't know if I have time to give back to counsel at all.

Was that my full time?

The CHAIRMAN. Oh, yes.

Senator DODD. Oh, I'm sorry.

The CHAIRMAN. Senator Faircloth, I've asked could you yield 30 seconds to Senator Shelby?

Senator SHELBY. How about 10, sir?

The CHAIRMAN. About 10 seconds, and I'd ask for a minute, if you might.

Senator FAIRCLOTH. Go right ahead.

The CHAIRMAN. Thank you.

Senator Shelby.

Senator SHELBY. You were allowed in the office, not you, but the Park Police investigating team was allowed in Mr. Foster's office, but you were not allowed to look at anything; is that correct?

Mr. HINES. That is correct.

Senator SHELBY. That's correct. In other words, Mr. Nussbaum, in his infinite wisdom, controlled what was what in the office, what you could do?

Mr. HINES. That is correct.

Senator SHELBY. So this investigation, would you consider its initial part like a sham?

Mr. HINES. Pardon me, sir?

Senator SHELBY. Was it a sham of an investigation then?

Mr. HINES. I wouldn't call it a sham, but I would say that we would have liked to——

Senator SHELBY. Would you have called it an investigation?

Mr. HINES. We would have liked to have looked at those documents, at some of those documents ourselves.

Senator SHELBY. It was totally an incomplete investigation, wasn't it?

Mr. HINES. Yes, it was.

Senator SHELBY. Thank you.

Thank you for yielding, Senator.

The CHAIRMAN. If I might, Sergeant Braun, if you had been permitted access to the office, is it fair to say that you would have looked through Mr. Foster's briefcase?

Ms. BRAUN. I would have probably started with Mr. Foster's desk, looking in the obvious place, on the top of the desk to see if there was a note or any information left there like his journal or his diary.

The CHAIRMAN. After looking through that, after you found none, and you saw his briefcase—you would have noticed his briefcase—would you have looked in that? Is it fair to assume good investigative procedure would have dictated that you look into that briefcase?

Ms. BRAUN. Yeah. Probably the procedure, though, that I would have used would have been in concert with Mr. Foster's secretary, who would know how he keeps his papers, where he keeps his papers, and I would have asked her for certain documents and where he kept them. If she handed me the briefcase to look in, I would have looked in the briefcase.

The CHAIRMAN. If the briefcase was in the room next to the desk, would you have looked at it?

Ms. BRAUN. Quite possibly. I wasn't there, so——

The CHAIRMAN. I understand that. But under such circumstances, a suicide, looking for a note, entering the person's office, looking on the top of the desk or in any of the pull-out drawers to see if there is any note or any information, you would go through the diaries. If there was a briefcase there and you had found one, wouldn't you look——

Ms. BRAUN. If this was something that he carried back and forth with him between work and home, yes.

The CHAIRMAN. OK. I just wanted to find out your procedure.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Detective Rolla, it's nice to have you back after a year.

Mr. ROLLA. Thank you, Senator.

Senator FAIRCLOTH. Earlier you said that you had been, and I quote, "stonewalled," and weren't getting any cooperation from the people at the Foster home. Were you surprised that no one at the Foster home seemed to want you to investigate Mr. Foster's death?

Mr. ROLLA. That word "stonewalled" is creeping up. I never got the impression that no one wanted me to not—or they wanted me not to investigate the death. "Stonewalled" might be—as I think I testified last time—maybe it was too strong of a word. It's a word I used. I used that word in connection with—I believe they had the information that he was suffering depression, that they did give him names of doctors, that he was receiving medication from a doctor in Arkansas for depression and that—it would have been much simpler circumstances to take us aside, if they wanted to do it privately, to have somebody tell us that, that there was some problem. Having knowledge and not giving it is what I would interpret as stonewalling.

Senator FAIRCLOTH. OK. Mr. Rolla, would you please tell me about your conversation with Mr. Markland in reference to the White House's stonewalling of the Park Police's investigation in the period from July 20, 1993?

Mr. ROLLA. Again, this is 2 years ago, and I don't have any exact recollection. I remember that he and Captain Hume were upset on July 21, 1993, I believe, the first day they went up there. They were not treated properly or very nicely. No respect was given to them and I don't have any exact—I know they were angry about the way they were treated at the White House.

Senator FAIRCLOTH. Let me ask you another question. We'll move through these. On July 28, 1993, you were at the office of Jim Hamilton, Vince Foster's attorney, and you were there to examine material from Mr. Foster's office; is that right?

Mr. ROLLA. That's correct.

Senator FAIRCLOTH. In those files was there a diary?

Mr. ROLLA. Yes, there was.

Senator FAIRCLOTH. Did you ask Mr. Hamilton to see the diary?

Mr. ROLLA. Yes.

Senator FAIRCLOTH. What was his response?

Mr. ROLLA. For some reason Mr. Hamilton put up a small front to us looking at the diary, that it was personal documents or whatever. Myself and Lieutenant Kass were there. Lieutenant Kass told Mr. Hamilton that these were the only documents we were allowed to see from the office and we were finally getting to look at them. If there was possible evidence, we were going to look at these documents.

We're not trying to embarrass anyone, but we have an investigation. We're going to look at what you give us here and if there is something we need, we're going to take it.

Senator FAIRCLOTH. But you got a chance to look at the diary, didn't you?

Mr. ROLLA. Yes, I looked at it.

Senator FAIRCLOTH. Was there anything in it about Whitewater?

Mr. ROLLA. Not to my recollection. It was—only 10 to 15 pages had writing on them.

Senator FAIRCLOTH. Was there anything else that you thought might have led to a suicide or any troubling instant or issue with the White House? Was there anything there?

Mr. ROLLA. No.

Senator FAIRCLOTH. Let me refresh your memory. You told the FBI in an interview dated December 22, 1993, there was nothing that would indicate depression or any interest in suicide.

Mr. ROLLA. That's correct, there wasn't.

Senator FAIRCLOTH. Yet you mentioned there was a party at the Governor's Mansion following Bill Clinton's election as President. Mr. Foster makes mention of this in his diary.

Why did you think it was important to tell the FBI about this, and did Mr. Foster say anything in his diary that you want to tell us?

Mr. ROLLA. I'm sorry, they handed me this document I was looking at—mentioning the party at the Governor's Mansion?

Senator FAIRCLOTH. Yes, there was a mention——

Mr. ROLLA. Basically, they asked me what I could remember. I don't believe there were any dates written on the pages. The timeframe, I told them, I believed was post-election, pre-inauguration, and that in one passage I remembered that—and I don't remember word for word. It was obvious that himself and Mrs. Clinton were

close personal friends, a working relationship, were friendly and there was a party—a passage about a party at the Governor's Mansion. There was something else about his daughter leaving the party or something, I believe. Just what I could remember.

Senator FAIRCLOTH. OK. About Foster leaving the party?

Mr. ROLLA. No, I think it was his daughter leaving with another friend—going to the party, leaving, I really don't remember.

Senator FAIRCLOTH. Mr. Hines, you understood that your Park Police Officers Hume and Markland were having trouble with the White House, and that the White House was preventing them from doing a real investigation. As a result of knowing this, you went to see Tom Collier, Bruce Babbitt's Chief of Staff; is that right?

Mr. HINES. Yes, I did.

Senator FAIRCLOTH. You asked his help in getting more cooperation out of the White House for the Park Police; is that correct?

Mr. HINES. We told him that we perceived some problems and briefed him on what problems we perceived, and he said that he would look into it.

Senator FAIRCLOTH. Are you aware that 2 months later, in September, Mr. Collier hired Webb Hubbell's wife as his special assistant? Mr. Hubbell being one of Mr. Foster's closest friends.

Mr. HINES. No, I'm not aware of that.

Senator FAIRCLOTH. Did you know that Ms. Hubbell left that job for 11 months, but was allowed to come back to it during the time that Mr. Hubbell was cooperating with the prosecutor?

Senator DODD. Mr. Chairman, can I inquire as to the scope of this?

The CHAIRMAN. Senator, let's stay within the scope if we can.

Senator FAIRCLOTH. Is that out of the scope?

The CHAIRMAN. Yes.

Senator DODD. Thank you, Mr. Chairman.

Senator FAIRCLOTH. Ms. Braun, Mr. Hubbell said that he and Lisa Foster said they searched for a note, did they tell you that? Did they tell you that they did that?

Ms. BRAUN. No, sir.

Senator FAIRCLOTH. You say no?

Ms. BRAUN. No, sir.

Senator FAIRCLOTH. They did not tell you. Why don't you think they told you that they were looking for a note and couldn't find it?

Ms. BRAUN. I had no contact with anybody from the Foster family or Mr. Hubbell after we left there at 11 p.m. that evening.

Senator FAIRCLOTH. After all, at that time they did not know for certain that this was a suicide. Wouldn't they have wanted to get information from you as opposed to pushing you out of the way?

Ms. BRAUN. I'm not sure I quite understand the frame of your question there, Senator.

Senator FAIRCLOTH. I'm sorry.

Ms. BRAUN. I don't understand your question, Senator.

Senator FAIRCLOTH. I would have thought they would have been trying to get information from you, rather than moving you aside.

Ms. BRAUN. I don't know what was going through their heads, Senator.

Senator FAIRCLOTH. All right. Thank you. Time's up.

The CHAIRMAN. Thank you, Senator.
Senator Sarbanes.
Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much. Before I turn to the panel of witnesses—and I just want to say welcome and I know this is not the most pleasant of duties and you are very professional and articulate and very credible—I just want to make a point, and I'd like to ask the Chairman a question if I could have his attention for a moment.

Mr. Chairman? Mr. Chairman, I wanted to ask you a question if I could. I am still concerned about what I view a little bit as selective cooperation from the Independent Counsel regarding the Maggie Williams polygraph result, and it is my understanding that the polygraph test on Maggie Williams was administered by the FBI under the supervision of the Independent Counsel and that she took it voluntarily and that her counsel was advised by the Independent Counsel that she passed the test. Now, that's my understanding. Will I be permitted or would other Members of the Committee be permitted to question both Maggie Williams and her attorney regarding that test since we cannot get the actual results of that test?

The CHAIRMAN. Yes, you will be. There is nothing that I am aware of that would preclude that. As a matter of fact, it may now be necessary since we will not receive the test—I mentioned it today at the opening along with Senator Sarbanes—to enter into the record the letter of request and the Special Counsel's reasons for the denial of our request. This was the second formal communication in addition——

Senator BOXER. I was here for that. I just wanted to make sure that that doesn't preclude us from asking questions to get verification.

The CHAIRMAN. No, this Committee will not be precluded from asking questions and it might even require us to go further——

Senator BOXER. Oh, OK.

The CHAIRMAN. We try to save that time.

Senator SARBANES. Mr. Chairman, if the gentle lady will be glad to yield just for a moment.

Senator BOXER. I'd be glad to, yes.

Senator SARBANES. I would also like to make the observation that Senator Faircloth asked the question of Detective Rolla based on the 302 report written by the FBI after their interview with Detective Rolla, that's what the question was about earlier.

We asked the Independent Counsel for the 302 reports on Margaret Williams and Agent O'Neill and were denied those reports. Of course, again, I want to emphasize as I did at the outset that I think it would have been very helpful to us to have those 302 reports along with the results of the polygraph test which the Senator from California has just mentioned.

Senator BOXER. Thank you very much. Then I'm going to pursue that line of questioning at the appropriate time.

I'd like to ask you, Ms. Braun, as a matter of fact each of you, to answer this. You were at the home, as you've testified, the night

of the suicide. Was it your sense as you saw many people in the house, and you were there until 11:10, that there were meetings going on, that there was some kind of undertone or buzz going on about what to do about papers and documents, or would you say that this was a home where people were gathered because they had heard about this man who they cared about and wanted to pay their respects to the widow and perhaps console each other?

Ms. BRAUN. I would have to say it was probably the latter.

Senator BOXER. Mr. Rolla?

Mr. ROLLA. I would say, obviously, they were close friends and they were there to console and heard news, and I don't have any idea who they talked to or what those conversations were about while they were on the phone. Certain people were on the phone the entire time they were there.

Senator BOXER. I didn't ask you if they were on the phone. I asked you if you saw, as you looked around the room, groups meeting and people discussing business matters, meeting in private rooms out of your sight, perhaps, or where they were doing anything other than discussing their grief or talking about the suicide.

Mr. ROLLA. People were meeting out of my earshot, talking on the phone and discussing things. I don't know what they were discussing.

Senator BOXER. OK. So you can't answer the question of whether you thought it was—as Ms. Braun can. To you, you're not sure if it was more condolence calls or business meetings or meetings about papers?

Mr. ROLLA. I think it's obvious there was condolence calls because—that was obvious, but it was also obvious—a businesslike atmosphere.

Senator BOXER. Mr. Hines?

Mr. HINES. I was not there that night, Senator.

Senator BOXER. OK. It's now been 2 years—actually, I think it is tomorrow.

Mr. ROLLA. Today.

Senator BOXER. It is today—since Vince Foster's death. I would ask each of you to answer, is there anything that has come to your attention, either professionally, personally, through reading the press in any way, that leads you to change your mind that this was anything but a suicide? Ms. Braun?

Ms. BRAUN. No, Senator.

Senator BOXER. Mr. Rolla?

Mr. ROLLA. No.

Senator BOXER. Mr. Hines?

Mr. HINES. Nothing.

Senator BOXER. I want to get back to the sealing of the office or the securing of the office or the locking of the office or the closing of the office and try to clarify in my mind what happened. I'm going to ask each of you to tell me if I'm incorrect. Ms. Braun, on your way out of the door, literally, you said to Mr. Watkins something to the effect of Vince Foster's office at the White House should be secure?

Ms. BRAUN. Yes.

Senator BOXER. You don't recall exactly what he said, but you think you remember him agreeing with you; is that correct?

Ms. BRAUN. Yes, he definitely did not say no, I can't do that.

Senator BOXER. OK. He did not say I can't do it. Did he say I'm going to do it this second?

Ms. BRAUN. There was no timeframe discussed.

Senator BOXER. OK. Mr. Rolla, you did not hear that conversation, but you were informed of it by Ms. Braun; is that correct?

Mr. ROLLA. That's correct.

Senator BOXER. OK. The fact is that the office was locked shortly after you made that request. I guess I'm confused about—let me put it this way. Out of all the things you said to Mr. Watkins that night and of all the things you said to anyone that night regarding your professional responsibilities, what were the most important things you said that night, what were the most important questions you asked that night, what was your most important role that night, Ms. Braun?

Ms. BRAUN. My role was to confirm that we had a suicide, and that's what I was attempting to do.

Senator BOXER. Was your role to inform the widow that——

Ms. BRAUN. That was part of it.

Senator BOXER. —she was a widow? Was that important?

Ms. BRAUN. Yes.

Senator BOXER. So the most important thing for you to do was to come to the house, go eye to eye with the widow and her family, inform them of this and ask them questions which might give you some more light on the subject; is that correct?

Ms. BRAUN. Yes.

Senator BOXER. So the most important thing was not your saying to Mr. Watkins on the way out the door secure the office? Was that the most important thing?

Ms. BRAUN. At that point I was doing a mental checklist of things that had been done and what still needed to be done, and that's where it fell, was on my way out the door, this is one area that we still need to check into, that we need to do. Since Mr. Watkins had been developed as our liaison, that's why I covered it with him on my way out the door.

Senator BOXER. OK. Was it the most important thing you did that night, making that comment to Mr. Watkins?

Ms. BRAUN. No, I would say it was not.

Senator BOXER. It was not the most important thing. You didn't write it in your report; is that correct?

Ms. BRAUN. That's correct.

Senator BOXER. Why is that?

Ms. BRAUN. I had been up since 7 a.m. that morning and it did not come to me as I was sitting there at the PC putting together my report.

Senator BOXER. Wait a minute. It did not come to you sitting at the PC that you had told Mr. Watkins to secure the office?

Ms. BRAUN. That's correct.

Senator BOXER. OK. That would certainly confirm tne view that you didn't think it was the most important thing you did or said that night.

Ms. BRAUN. Yes.

Senator BOXER. Is it in your rules of procedure that in a situation like this anything other than the crime scene would be sealed?

Ms. BRAUN. No.

Senator BOXER. I would yield the time to—let me ask one more question.

Senator SARBANES. There's no time left.

Senator BOXER. I want to get to the issue of—I'm going to yield to counsel in a minute.

Senator SARBANES. There is no time left.

Senator BOXER. There's no time left. I'm so sorry. I'll wait.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Sergeant Braun, we've been going over and over this, but I want to try to make it clear that you do recall asking Mr. Watkins to seal the office?

Ms. BRAUN. Yes, sir.

Senator BOND. You have no doubt about that?

Ms. BRAUN. No, sir.

Senator BOND. You indicated that he was to be the liaison with the White House. You interpreted that from—on what basis did you make that assumption?

Ms. BRAUN. I made that assumption through the fact that we were contacted by our shift commander to contact Mr. Watkins, that he wanted to go do the notification with us. Since Mr. Watkins was a person that we had been dealing with and had brought with us to do the notification, I put him into that role as liaison.

Senator BOND. You've used the term seal, close or secure the office. Is there any question in your mind that there is a different level of access permitted? In other words, I understood from your testimony that it didn't matter whether you said close, seal or secure the office. You did not want anybody going in there, rummaging through papers, removing papers or having access to the office; is that correct?

Ms. BRAUN. That's correct. I wanted it left pretty much the way it was when Mr. Foster left.

Senator BOND. It did not matter whether you were investigating a possible suicide, a possible murder or a possible conspiracy. You wanted to have that office kept as it was?

Ms. BRAUN. Yes, sir.

Senator BOND. You said in your testimony earlier that Mr. Watkins was getting off the telephone. Did he mention to you anything about to whom he had been speaking?

Ms. BRAUN. No.

Senator BOND. When you asked him to seal the office, was there any question in your mind that he did not know what that meant?

Ms. BRAUN. No, he didn't ask me any questions regarding it. He just indicated that it would be done.

Senator BOND. Did he indicate to you that he had just told his subordinate, in this case Patsy Thomasson, in fact, to go search that office?

Ms. BRAUN. No.

Senator BOND. He did not indicate in any way that this order was actually going to be violated before he could carry it out?

Ms. BRAUN. No.

Senator BOND. Do you have any reason to mislead this Committee or to make any statement about this matter that is not true?

Ms. BRAUN. No, sir.

Senator BOND. This is part of your professional responsibility, to testify accurately to this information?

Ms. BRAUN. Yes, sir.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much, Mr. Chairman. I note that this is the second anniversary of Vincent Foster's death today, which I think is rather revealing that we should be here on that anniversary. I want to make that observation.

My questions are directed toward Major Hines.

Do you recall Captain Hume using the word stonewalling, quote unquote?

Mr. HINES. At some time—I don't know if it was Captain Hume or not, but I believe it was. He used the word that he was stonewalled. That was his perception.

Senator MURKOWSKI. Do you know when that was?

Mr. HINES. No, Senator, I don't.

Senator MURKOWSKI. Whether it was the morning of July 22, 1993, or do you recall?

Mr. HINES. I don't know the exact time.

Senator MURKOWSKI. On July 22, 1993, was there a sense developing at the Park Service relative to some problems with the investigation and that someone at the Department of Interior should be contacted?

Mr. HINES. Yes, Senator. On July 22, 1993 or the evening of July 21, 1993, there was a feeling, in our perception, that we were not getting the cooperation that we felt we should have.

Senator MURKOWSKI. Was there a person identified at the Department of Interior that should be contacted by name?

Mr. HINES. Yes. The chief and I decided we should contact Mr. Tom Collier.

Senator MURKOWSKI. Why was Mr. Collier suggested?

Mr. HINES. He was Chief of Staff, and we felt he was the person that might give us the assistance or advice we may need. That was the purpose for us contacting him, for assistance or advice.

Senator MURKOWSKI. Was that Chief Hume you're referring to?

Mr. HINES. No, that's Chief Langston.

Senator MURKOWSKI. Was there anything that Hume said to you, like, relative to the documents, like you're not letting us see the documents? Was that something you recall?

Mr. HINES. Yes, I recall that.

Senator MURKOWSKI. Can you elaborate a little further?

Mr. HINES. Captain Hume explained that when they went into the office, that they were not allowed to see any of the documents, that the Chief of Staff handled all of the documents and determined whether they would see them or whether they would be private documents we would see later and would be released to the Foster family attorney.

Senator MURKOWSKI. Did you meet with Mr. Collier, along with Chief Langston, about July 22, 1993, the same day?

Mr. HINES. On July 22, 1993, in the late afternoon of July 22, 1993, we did meet for about 5 or 10 minutes.

Senator MURKOWSKI. Do you recall the substance of that meeting?

Mr. HINES. We gave him a heads-up that we proceed—that we had some problems, and he said keep him apprised.

Senator MURKOWSKI. When you say you're having some problems, would you elaborate?

Mr. HINES. Elaborate. Just on the cooperation, and that we hadn't been in the office to examine the office at this time, and we told him a little bit about the scene, that we were fairly sure, preliminarily, that we thought it was a suicide.

Senator MURKOWSKI. Did you tell him you had been unable to search the room?

Mr. HINES. At the first meeting we had been unable to search the room.

Senator MURKOWSKI. You told him that?

Mr. HINES. Yes.

Senator MURKOWSKI. What was his response?

Mr. HINES. He said to keep him apprised of the situation and he would look into the matter.

Senator MURKOWSKI. It was just a matter of fact; you made the statement, and he acknowledged that he would search——

Mr. HINES. He acknowledged.

Senator MURKOWSKI. Did there come a time when you were advised that Hume and Markland were allowed to actually enter Vince Foster's office?

Mr. HINES. Yes, they entered the office the next day.

Senator MURKOWSKI. Were others there then, do you know?

Mr. HINES. From their reports there were others. They initially didn't tell me the others.

Senator MURKOWSKI. This was 2 days after Foster's death?

Mr. HINES. Yes, it was.

Senator MURKOWSKI. That was the first time the Park Service was in that office?

Mr. HINES. Yes, Senator, that was the first time the Park Police were in the office.

Senator MURKOWSKI. In spite of the direction by the Park Service to David Watkins to seal the office, and that direction was given by the Park Service Police, that direction clearly resulted in you, representing the Park Service Police, not getting in there for 2 days?

Mr. HINES. Senator, when we say direction, when the U.S. Park Police, a Subunit in the Department of Interior—we requested, I think, was the word we used to seal that office. I don't think we have authority to direct anyone in the White House to seal an office.

Senator MURKOWSKI. Do you recall any reports from Hume and Markland with regard to their visit to Mr. Foster's office?

Mr. HINES. I recall the report, yes.

Senator MURKOWSKI. Can you elaborate? What do you recall?

Mr. HINES. I recall what I have previously said, that they did not see any documents at all, that Mr. Nussbaum controlled all of the examinations of the documents.

Senator MURKOWSKI. I would assume "control" means Mr. Nussbaum, what, did he conduct the search in your opinion?

Mr. HINES. He would look through a document, say this is either lawyer material or this is personal matters, and put them in little stacks.

Senator MURKOWSKI. My last question. Mr. Hines, I believe you testified that you thought the Park Police would have found Mr. Foster's note if you had been allowed to search the office without interference; is that correct?

Mr. HINES. I believe we would have found the note in the briefcase, yes.

Senator MURKOWSKI. In fact—and I'm quoting from a conversation you had with Captain Hume which you related to us during your deposition. I quote:

> When I talked to Captain Hume in relation to this, I said we would have found the note because we would have been looking in the office and found his briefcase, and he said, 'Yeah, our oldest, blindest detective would have found the note,' which is true. If it had been in the briefcase the morning that we were in there and we would have looked into it, we would have found it.

I see you agreed with his assessment. I assume you do today.

Mr. HINES. Yes, Senator, had we looked into that briefcase, I'm confident that any one of our detectives would have found the note in the briefcase.

Senator MURKOWSKI. Mr. Hines, you also stated in your deposition that the Chief of Staff of the Park Police received the note via the Justice Department 30 hours after the White House discovered it. When asked what you knew about the process of the note being turned over, you stated "they," I assume the White House, "had a lot of high-powered people to decide to release the note to the Park Police." Wasn't the Attorney General the one who ultimately told the White House to turn it over to the Park Police?

Mr. HINES. From the reports I have read, that is my understanding.

Senator MURKOWSKI. Having taken 30 hours to produce that note, would you consider that to be interference with your investigation?

Mr. HINES. I would not call it interference. I think they were very cautious in their release of the note, though.

Senator MURKOWSKI. I would refer to your deposition, but I'll conclude.

The CHAIRMAN. Thank you, Senator.

Senator SARBANES. Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Senator Sarbanes. I'd like to make a preliminary observation and compliment each of you not only in terms of what you did on the evening in question and the events that followed that, but on your very professional demeanor. I think the American people watching your testimony can feel very proud that they have some very dedicated professionals who are called in under very difficult circumstances to make some decisions

and judgments about how to handle a tragic suicide of a high-ranking public official in the White House.

Mr. HINES. Thank you, Senator.

Senator BRYAN. I'd like to get a little bit more of a feel from Sergeant Braun and Detective Rolla.

When you went into the Foster home that evening, my understanding is the two sisters were there, Mrs. Foster and the daughter, Laura, I believe the name was, was there; am I correct?

Ms. BRAUN. Yes, sir.

Mr. ROLLA. Yes, sir.

Senator BRYAN. I guess it never gets any easier relating some tragedy of this magnitude to a personal family member?

Mr. ROLLA. No.

Senator BRYAN. Tell me how, in your own mind, you were going to communicate this to the family.

Mr. ROLLA. We thought about different ways to put it, but you think about it, but until you're in a situation—every situation ends up being different. So I just came up with the most matter of fact way to say it, by being sensitive but not leaving a question that her husband was dead.

Senator BRYAN. I suppose the thought runs through your mind, I wish somebody else was on duty tonight, relaying this kind of information?

Mr. ROLLA. Boy, I wish somebody else was on duty that night.

Senator BRYAN. In more ways than one, I'm sure. Sergeant Braun, is that essentially your feeling, too, as you were traveling out to the Foster home?

Ms. BRAUN. As a matter of fact, John and I discussed it on the way. Usually the direct approach is the best way and, basically, that's the approach that John used. It's not that we were trying to just dig out information. I mean, we were trying to be somewhat sensitive to the needs of the family, and that's why we had agreed to allow Mr. Watkins and his wife to go with us for the notification. But, in turn, we still had a job to do.

Senator BRYAN. You had lots of thoughts, I'm sure, tumbling through your mind as you're traveling out there about what you're going to do and how you're going to handle it. I have a lot of empathy for you. I wouldn't want that kind of a job, quite frankly.

You indicated, Sergeant Braun, that there were many things that you were doing, priorities that you had. I think in response to Senator Boxer's question you indicated with respect to the request to seal the office, that that was not uppermost in your mind in terms of the kinds of things that you were doing. I believe the record reflects that as you were dictating your after-action report, that particular request was not included in your report, if I recall?

Ms. BRAUN. That's correct. My report, basically, just dealt with what I did at the scene. It really did not go into what I did at the home. John's report indicated what went on with the notification, and I probably should have done a separate report myself, but I didn't feel like duplicating what was being done.

Senator BRYAN. I don't offer that in any criticism at all, just to try to get, basically, your state of mind at the time. I'm also led to believe, from reading the background information that was provided, that at the time, 2 years ago, there really was not an inves-

tigative manual that the department had that outlined all of the things that one ought to do with respect to an investigation involving suicide.

Ms. BRAUN. That's correct.

Senator BRYAN. And that after this event—obviously, we all benefit from the experience of hindsight—that, subsequent to this event, there was a manual prepared that, in part, included how one handles a suicide investigation. Am I correct on that?

Ms. BRAUN. That's correct.

Senator BRYAN. Did any of the three of you have the opportunity to comment or make suggestions or to any way participate in the database, for lack of a better term, as to what ought to be included in that manual?

Ms. BRAUN. One of our most senior detectives in the office wrote the manual and, of course, after this event occurred, there was a lot of discussion in the office. I'm sure that was all taken into consideration when the manual was written.

Senator BRYAN. Am I correct in terms of sequencing, the manual is published after the events of July 1993?

Ms. BRAUN. Yes, it was. Just for a little more background, the office contained a number of senior—still does contain a number of senior detectives with 20-plus years on, that could retire tomorrow, and they felt the need to get some of this information down because of the situation that John and I had, where we both were very new into the office and were thrown into a situation. So that would allow other people to have a checklist to go through and make sure that everything was done the way it was supposed to be done.

Senator BRYAN. By the way, I compliment the department on that. That makes a lot of sense. You have experience. Your people gain some insight into some things, and you make some changes in updating your procedures, and your manual is updated. I think that makes a lot of sense.

I note that, with respect to the manual as it relates to suicide, there is an entry in there called "place of employment." Let me just read that for you because I think it bears out your own evaluation in terms of the priorities, Sergeant Braun and Detective Rolla.

It goes on to say, and I'm quoting:

> For a complete and comprehensive investigation, an investigator shall visit the place of employment of the deceased. It may be necessary to interview friends and co-workers to determine unusual behavior or mood changes of the victim. When conducting interviews of the place of employment, the investigator shall organize the on-site activities with the supervisor at that location. While talking with the supervisor, a request shall be made to examine the victim's workplace. This should be done in a dignified, unobtrusive manner.

I don't think any of us could quarrel with that, but I do note in looking at the manual prepared after the event, that at no place does it indicate that it ought to be sealed or locked anyway. Am I correct in reaching that conclusion, Sergeant?

Ms. BRAUN. Yes, you are.

Senator BRYAN. Which I think makes the point that you're making, that there are other priorities in conducting these kinds of investigations and, frankly, that wasn't one of the priorities you had.

In terms of the kind of information that you were looking for at the office, I gather that you really were not interested in the work product of the office; that is, what was occurring with respect to re-

viewing prospective applicants for appointment to various positions in the Federal Government or any of the national security files or anything of that sort. You were looking for some kind of demonstrable evidence indicating that hey, there was a suicide note or something that would bear on the suicide investigation. Let me just ask the three of you if that's not a correct analysis?

Ms. BRAUN. Yes, we were looking for personal information that would verify that Mr. Foster's state of mind was one to commit suicide.

Mr. ROLLA. That's correct.

Senator BRYAN. Major Hines?

Mr. HINES. That's correct.

Senator BRYAN. That's all the questions I have. I would yield back the time to counsel, if counsel wanted to—Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, sir.

Just to follow up on the point which was made, the manual relating to suicide investigations was prepared principally by Detective Rayfield; is that correct?

Ms. BRAUN. Yes, sir.

Mr. ROLLA. It was circulated through the office afterwards for comments.

Mr. BEN-VENISTE. It was circulated around?

Mr. ROLLA. Yes, it was.

Mr. BEN-VENISTE. Detective Rayfield was a very experienced investigator who had the confidence of everyone in the office; is that correct?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. Could we put on the screen Exhibit 16 from the Park Police? A hard copy has been provided to each of you. That is, in fact, the manual which includes the collective experience and wisdom of your best investigators concerning what kind of procedures to be used under such circumstances, is that correct?

Ms. BRAUN. Yes.

Mr. BEN-VENISTE. As Senator Bryan has pointed out, what you do in connection with a normal situation in a workplace investigation is to secure the cooperation of the people who worked together with the decedent to try to find out whether they have seen any papers or can provide you with any information that would be helpful; is that right?

Mr. ROLLA. That's correct.

Ms. BRAUN. Yes.

Mr. BEN-VENISTE. It has nothing to do with actually sealing a place of employment or locking it up or otherwise barring others from entering; correct?

Mr. ROLLA. No, the manual does not.

Mr. BEN-VENISTE. It does not. The distinction is obviously made between the scene of a death and a workplace investigation related to a suicide that occurs in a different location; is that correct?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. Finally, with respect to your experience in investigating suicides, Sergeant Braun, how many suicides had you investigated prior to July 20, 1993?

Ms. BRAUN. I had done one prior.

Mr. BEN-VENISTE. One prior. In that case, I trust the workplace was not sealed?

Ms. BRAUN. The workplace wasn't relevant.

Mr. BEN-VENISTE. In your collective experience, including Major Hines', I trust there has been no example of a workplace being sealed or requested to be sealed where that workplace was not the scene of the death; is that correct?

Mr. HINES. That's correct.

Mr. BEN-VENISTE. You've talked to your colleagues at the Park Police, and that is a uniform conclusion, is it not?

Mr. ROLLA. I believe so.

Mr. HINES. Yes, it is.

Mr. BEN-VENISTE. So, essentially, when you were going to the White House, you were looking for the cooperation of individuals there to help you along with your investigation to look for the limited types of materials that you've described here; correct?

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. The only thing about this request of the Counsel's Office to the White House was that this wasn't a normal workplace at all. It was filled with lawyer's files and, indeed, the files of the lawyer to the President of the United States; correct?

Mr. ROLLA. That's correct.

Mr. HINES. That's correct.

Mr. BEN-VENISTE. You didn't expect or would have expected that you would be able to look through all of those files; is that correct?

Ms. BRAUN. That's correct.

Mr. ROLLA. That's correct.

Mr. BEN-VENISTE. There's no way that you wanted to do that?

Ms. BRAUN. No.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Mr. Hines, on the night of July 20, 1993, you got a phone call at approximately 9:45 informing you of the Foster death; is that correct?

Mr. HINES. That's correct, Senator.

The CHAIRMAN. Who called you from the Park Police?

Mr. HINES. Lieutenant Gavin.

The CHAIRMAN. Lieutenant Gavin called you and suggested that you make contact with people at the White House?

Mr. HINES. Yes, he did.

The CHAIRMAN. You called a Mr. Burton?

Mr. HINES. Yes, I did.

The CHAIRMAN. Mr. Burton is the assistant to Mr. McLarty, the Chief of Staff of the White House?

Mr. HINES. That's my understanding.

The CHAIRMAN. You testified in your deposition that he was obviously shocked and upset, you could tell——

Mr. HINES. I could tell on the phone that he was very upset.

The CHAIRMAN. He told you of the close relationship—because you didn't realize it at the time—and what Mr. Foster's position was in the Administration?

Mr. HINES. Yes, he did.

The CHAIRMAN. His relationship with the President?

Mr. HINES. Yes, he did.

The CHAIRMAN. Then you go on, on page 29, and you say—I want to verify whether this is correct, if your memory is still as you gave in the deposition. I will read to you. You were telling him, "One of the things we would need to do is to look into his office," meaning Mr. Foster's office, "for any evidence of motive that we might find for a suicide like a suicide note or any other items." Then you continue, "We have a certain protocol, investigation of suicides that we look for. I told him that he would need to have his offices secured for those reasons." Did you tell him that?

Mr. HINES. Yes, I did.

The CHAIRMAN. Is that correct?

Mr. HINES. That's correct.

The CHAIRMAN. You remember having told him that, you remember having testified to that in your deposition?

Mr. HINES. Yes, I do.

The CHAIRMAN. That is correct and true?

Mr. HINES. Yes, it is.

The CHAIRMAN. Mr. Chertoff.

Senator Grams, excuse me.

Senator GRAMS. I had one question. I'd like to make a clarification in response to some questions that Senator Dodd had asked and also Minority counsel. They tried to talk about the sealing of the office, how it all of a sudden wasn't important in your minds. I think he said by the next morning you had assessed in your opinion that this was a suicide, and sealing the office, in your mind at that time, was not as important. I think you both responded yes, although Mr. Hines had testified until this is concluded, certainly, and all evidence is in that it was a suicide, all areas should be considered as if a crime scene were involved.

Would you agree with that, that even the next morning, while the assumption was this was a suicide, all the information had not been in, and so the office still should have been considered an area that should have been sealed?

Mr. ROLLA. No, I don't agree with that.

Senator GRAMS. You think the next morning, that the information you had was enough to say that this was a suicide?

Mr. ROLLA. Well——

Senator GRAMS. That the office was not important and the integrity of the office was not important?

Mr. ROLLA. Let me say this: Whether that was a homicide or a suicide, that wasn't a crime scene. That's a secondary scene, not a crime scene. We have no legal authority to tell anyone to seal an office. If we wanted to get in to look for evidence, we would need a search warrant, and we'd have to come up with enough probable cause to get a search warrant.

The request to seal the office, which he told me—in my mind is why it's not written in the report, is an informal request for cooperation to go to the workplace. Because Mr. Foster, being who he is in the White House, we knew we were not going to be able to go in there that night. Our limited scope—again, what we want to look for, the higher-ups are going to have to be there, there's going to have to be protocol done to figure out how to go about this.

No, we don't want to read every legal document, but we would like to look through obvious areas and maybe look through some

drawers and the briefcase for, not just a suicide note, was there anything there, other reasons, a diary, a letter, something that could have caused embarrassment, something—not looking to embarrass the man, but trying to find mental—his state of mind at the time.

Senator GRAMS. I did infer that you were ordering, but I was asking if it was still important and if it was important enough to try to secure that area so it wouldn't have been "contaminated" as you stated earlier?

Mr. ROLLA. No, it was important to try to maintain it. Again, if somebody went in there because they had to do things related to his job, we have no authority to keep them out. If somebody went in there and removed things, that's beyond us.

Senator GRAMS. Mr. Hines, would you agree with that?

Mr. HINES. Senator, I'd agree with that. The reason the examination of the room—and I'll use "examination" as opposed to "search" because we're looking for limited information that might lead us to believe that his suicide—to prove that he had intent. The reason it's important is the person's office is a work space; it tells a lot about him. So if we could normalize him and find out how he conducted his business, was he neat? If he was neat and it was messy, that would be a piece of information we'd want to know.

The office itself is a piece of information, and that's why we wanted it secure. If you noticed, our guideline manual was published after this suicide, and we do say we would be very unobtrusive in searching his office, and we would have been.

We're looking for a note of suicide, we're looking for any information of any difficulty he may be having that would make him so discouraged that he would take his own life. Our only factor in this investigation is that we feel that we had a complete investigation. The only problems we've had is the conduct of the examination of that office. I would like to use the term "examination" and not the term "search" because when I say "search," I'm thinking of Fourth Amendment searches and, definitely, that was not our intent in this case.

Senator GRAMS. One quick question, Sergeant Braun——

Ms. BRAUN. Could I also answer that first question?

Senator GRAMS. Sure.

Ms. BRAUN. Since I am the one who spoke to Mr. Watkins, it was a request. It wasn't an order, and maybe the terms are getting all blown out of proportion. Secured—I've said it meant secured, closed, et cetera. I wanted to try to preserve that office in the state that it was. This isn't a perfect world. It didn't happen. It isn't the end of the world that it didn't happen, but, yes, that would have given us some insight, if people had not gone in and gone through the office, as to what kind of state it was in when Mr. Foster left and some indication as to his state of mind when he left. That's what I was looking for.

Senator GRAMS. Do you think the White House or those that were requested did an appropriate job in making sure that was done? Evidently not.

Ms. BRAUN. Like I said, it's not a perfect world.

Senator GRAMS. I wanted to ask one other thing in regards to what Minority counsel had mentioned about the manual on suicide

printed afterwards, and the office or work space was not as important, I think, was the line of questioning he was trying to infer.

Does that suicide manual refer to an office of a high-level member of the White House staff inside the White House? This is a completely unique situation, and that manual did not refer to the office of Vince Foster as not being important.

Ms. BRAUN. That's correct.

Senator GRAMS. Thank you.

Senator DODD. Mr. Chairman, this is unclear. I thought earlier the issue of whether or not the office—I think our colleague from Minnesota mentioned that the office was part of the crime scene, and there's no—you don't agree with that, that office was not in any way, whatsoever, part of a crime scene?

The CHAIRMAN. I think the record is pretty clear.

Senator GRAMS. We had established that before.

The CHAIRMAN. The importance of the office related to, at that point in time, what appeared to be a suicide. There's no doubt. It's not a crime scene, but I think the record amply attests to that. Senator, have you concluded?

Senator GRAMS. Yes, thank you.

The CHAIRMAN. We have several minutes. Three minutes.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Major Hines, am I correct from what you just said that you regard the office itself, including where everything is placed, whether it's neat or messy, where things are arranged, what the last thing looked at on the desk was—you look at all of that information in the office as evidence; correct?

Mr. HINES. That would be evidence and information that we would need in a suicide to determine a person's state of mind, and then we would ask questions. We would have to combine these with interviews with employees that he worked with.

Mr. CHERTOFF. So the very condition of the office itself is an important piece of information; correct?

Mr. HINES. Very important piece of information.

Mr. CHERTOFF. Sergeant Braun, I take it on the day of July 20, 1993 or the night of July 20, 1993, when you asked to have the office secured, you were using your best judgment, that going in there and looking at that information and evidence was important to you; correct?

Ms. BRAUN. That's correct.

Mr. CHERTOFF. You didn't order anybody to do it; right?

Ms. BRAUN. No, I did not.

Mr. CHERTOFF. You made a request for cooperation; correct?

Ms. BRAUN. Yes, I did.

Mr. CHERTOFF. Is it common in your experience when you deal with people who are witnesses or who have some involvement in an investigation that you want their cooperation?

Ms. BRAUN. Yes, sir.

Mr. CHERTOFF. Did Mr. Watkins indicate to you that he would refuse to cooperate?

Ms. BRAUN. No.

Mr. CHERTOFF. He told you he would cooperate?

Ms. BRAUN. Yes.

Mr. CHERTOFF. The reason you wanted that office secured—not with a lot of tape, but locked so that no one could get into it—was to prevent people from rummaging, moving things, opening things, packing things away; correct?

Ms. BRAUN. That is correct.

Mr. CHERTOFF. You didn't get your request adhered to; isn't that also correct?

Ms. BRAUN. That is correct.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Let me follow up quickly on that point, if I may. It's my understanding, Ms. Braun, that you left the house at approximately 11 p.m., 11:10?

Ms. BRAUN. Yes, sir.

Senator KERRY. The President of the United States had arrived?

Ms. BRAUN. Yes.

Senator KERRY. There was Secret Service everywhere?

Ms. BRAUN. There was one on the steps, and then I think there was one outside.

Senator KERRY. You never mentioned anything to them about sealing the office?

Ms. BRAUN. No, I did not.

Senator KERRY. The place was more crowded than ever at that point in time?

Ms. BRAUN. It was slightly more crowded, yes.

Senator KERRY. Would you say it was a very difficult situation in which to try to talk to people and get answers, get questions?

Ms. BRAUN. It made it impossible.

Senator KERRY. Impossible. All right. At 11:10 you made this request of Mr. Watkins to have the office either sealed or locked; is that correct?

Ms. BRAUN. Yes.

Senator KERRY. At the time you made that request, you weren't thinking about national security files, were you?

Ms. BRAUN. No, I was not.

Senator KERRY. You weren't thinking about any files, were you?

Ms. BRAUN. No. I was thinking about evidence, such as a suicide note, things that were going to indicate Mr. Foster's state of mind.

Senator KERRY. In fact, it's your evidence last year, it's your evidence this year, it's your testimony in depositions repeatedly, all of you, that really what was on your minds that night was Mr. Foster's state of mind; correct?

Ms. BRAUN. Yes.

Senator KERRY. Correct, Mr. Rolla?

Mr. ROLLA. That's correct.

Senator KERRY. What consumed you as you went to this house was not the word "Whitewater." In fact, did Whitewater cross your mind at that point?

Ms. BRAUN. I had never heard the word "Whitewater" before that.

Mr. ROLLA. I never heard it.

Senator KERRY. What consumed you was the tragedy?
Ms. BRAUN. Yes.
Mr. ROLLA. Yes.
Senator KERRY. At 11:10 you made a request not with any sense of somebody hiding something, just to secure it so if a note could be found or something existed to show state of mind, you would be able to find that?
Ms. BRAUN. Yes.
Senator KERRY. You are now aware that the office was, in fact, locked within half an hour; is that correct?
Ms. BRAUN. No, I'm not aware of that.
Senator KERRY. You're not aware of that. You don't know that the office was locked at 11:41 p.m., just 30 minutes later?
Ms. BRAUN. No.
Mr. ROLLA. No.
Senator KERRY. Would you say if, in fact, the office was locked and there's evidence that the office was locked 30 minutes later, that that's a pretty quick response under those circumstances?
Ms. BRAUN. Assuming it was, yes.
Senator KERRY. Would that response satisfy you in terms of your directive?
Ms. BRAUN. I guess, but knowing now that the office was entered before I made the request, it's a moot point.
Senator KERRY. I understand that, but if there was no request under the circumstances of this tragedy, if someone was not at a home where they were acting out and working out their grief, is it not perfect common sense and normal human behavior that they would gravitate to the place where they worked with this person? Is there anything unusual in your mind about that in terms of human behavior?
Ms. BRAUN. I guess not.
Senator KERRY. Mr. Rolla, what about you?
Mr. ROLLA. No.
Senator KERRY. So, before they get a request, some of his co-workers went to his office and there's evidence that Maggie Williams was sitting there crying. Does that strike you as unusual?
Ms. BRAUN. No, I guess not.
Senator KERRY. Now, importantly, again and again you have said the only thing on your mind was a note or state of mind; correct?
Ms. BRAUN. Yes.
Senator KERRY. You didn't view the house as a place of suspicion, did you, when you got there?
Ms. BRAUN. No.
Senator KERRY. You didn't go upstairs and search in the bathroom, in the medicine cabinet, under the pillow, on the bureau or anywhere for a note, did you?
Ms. BRAUN. That would be unreasonable.
Senator KERRY. Because you knew this was a place of grief, and it was a place where people were trying to give you answers about state of mind under difficult circumstances?
Ms. BRAUN. Yes.

Senator KERRY. Is there any reason to have believed that his office would have been a different kind of place that same night at that same time?

Ms. BRAUN. I guess it didn't occur to me. What I was looking for in that office was the state it was in when he left it.

Mr. ROLLA. I didn't expect anyone to be in his office. I didn't expect the office to be like his house, people gravitating, grieving. A house is more personal. We're not going to intrude on somebody's bedroom or in their house during that. Again, it's just an issue of cooperation.

Senator KERRY. In point of fact, his office was not treated as if it were a house. There were only three or so people, his co-workers in that particular department or in the White House, who went into it. Isn't that accurate?

Mr. ROLLA. I believe so.

Senator KERRY. Now, you never told Mr. Watkins specifically that you should not prevent anybody with a right to go into the office from going in, did you?

Ms. BRAUN. No.

Senator KERRY. Did you ever intend that somebody who had a right to go into the office should not go into the office?

Ms. BRAUN. No.

Senator KERRY. You merely intended that it be basically preserved from maybe the media coming in or a whole lot of people traipsing around and disturbing the possibility of exclusively finding a note; correct?

Ms. BRAUN. Right.

Senator KERRY. With respect to that note, we have the actual handwritten note. Both sides have had it, and out of respect to the family, that note is not now going to be made available on these screens, nor do I think it should be, necessarily, though I might say were it visible on the screen for people to read and see, I think they would have a better understanding of what all of this is really about. It has been made public, however, its contents.

Let me just ask you a couple of questions about it. Subsequent to the finding of that note, the handwriting of that note has been compared, has it not, to Vince Foster's handwriting?

Ms. BRAUN. I had no involvement in that part of the investigation.

Senator KERRY. Do you know that?

Mr. ROLLA. Yes.

Senator KERRY. Do you know that, Major?

Mr. HINES. Yes, I do.

Senator KERRY. You know that the finding is that this handwriting has been found to be Vince Foster's handwriting?

Mr. HINES. Yes, I do.

Senator KERRY. The authenticity of this note is not in doubt, is it?

Mr. HINES. It's not in doubt.

Senator KERRY. No one has questioned its authenticity?

Mr. HINES. Not to my knowledge.

Senator KERRY. Since it was handwritten and that authenticity is stated and clear and unquestioned, I might add, this note was written before Vince Foster died?

Mr. ROLLA. Yes, it was.

Senator KERRY. Therefore, let me read the contents to you for a moment, and I want to ask you a question about it.

Vince Foster wrote:

Whenever I made mistakes from ignorance, inexperience, and overwork, I did not knowingly violate any law or standard of conduct. No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the Travel Office. There was no intent to benefit any individual or specific group. The FBI lied in their report to the AG. The press is covering up the illegal benefits they received from the Travel staff. The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation. The Ushers Office plotted to have excessive costs incurred, taking advantage of CACI and HRC. The public will never believe the innocence of the Clintons and their loyal staff. The WSJ—standing for Wall Street Journal—editors lie without consequence. I was not meant for the job or the spotlight of public life in Washington. Here, ruining people is considered sport.

Now, I ask you, as investigators for the Park Police, is there anything in that note that strikes you as a note that should not have been found or that hides something or that has any evidence whatsoever of anything that might lead somebody to an ill conclusion about Vince Foster or the Clintons?

Ms. BRAUN. No. That note would have been helpful.

Mr. ROLLA. No, not to me.

Mr. HINES. No, not to me. The note, although not a suicide note, per se, did list some grievances he had and was a critical piece of evidence to us.

Senator KERRY. You just said it would have been helpful, Ms. Braun?

Ms. BRAUN. Yes.

Senator KERRY. Therefore, presumably, one would have wanted to have found it sooner?

Ms. BRAUN. Yes.

Senator KERRY. Now, turning to your statement at some point in the deposition, Major, in answer to a question about the finding—and friends on the other side of the aisle have asked you about this; they've said about this that a blind person could have found the note.

In answer to the question what did he say to you—this is referring to Captain Hume about the discovery of the briefcase—he said, "Well, basically, we're talking about a briefcase. We believe it was the briefcase that was in the office the morning of the search."

So, in effect, he doesn't know if it was the briefcase, but he believes it; correct?

Mr. HINES. That's true.

Senator KERRY. He says:

Mr. Nussbaum took papers out of the briefcase and looked into it and then put it down and kicked it in the back of the room.

Now, he's one of 13 people who suggests that is what happened, that he looked into it or did what he did, one of 13.

Then you say:

And when I talked to Captain Hume in relation to this, just in conversation, I said, 'We would have found that note because we would have been looking in the office and found his briefcase.' And he said, 'Yeah, our oldest, blindest detective would have found the note,' which is true. If it had been in the briefcase the morning we were there, and we'd have looked into it, we would have found it.

The point is, Major, you didn't look in, did you?

Mr. HINES. No, we didn't.

Senator KERRY. There were files in it; isn't that correct?

Mr. HINES. My understanding. I didn't look in the briefcase.

Senator KERRY. The evidence shows that the note was crimped beneath the middle flap; correct?

Mr. HINES. That's the way I understand it.

Senator KERRY. So if the files were in it on top of the crimp and on top of the note and you were looking down at files, you wouldn't see a note, would you?

Mr. HINES. Senator Kerry, if any one of the Park Police detectives would have searched that briefcase and if we would have looked in the briefcase, we would have found the note.

Senator KERRY. I agree. But they didn't, did they?

Mr. HINES. We didn't look into it.

Senator KERRY. Correct, and we'll get to all of that later. All I'm trying to point out is that we should not permit assumptions to be drawn here that are not based on the evidence.

Mr. HINES. True.

Senator KERRY. Isn't that true?

Mr. HINES. Yes, sir.

Senator KERRY. You know that as a detective, as an investigator?

Mr. HINES. That's true.

Senator KERRY. The fact here is it wasn't looked into. The facts about the state of the briefcase were, in fact, different from the phraseology that you were making your assumption on; isn't that true?

Mr. HINES. That's true.

Senator KERRY. So, point made, it's improbable to really say that judgment you drew is, in fact, true?

Mr. HINES. That was my opinion at the time.

Senator KERRY. Opinion, but not a fact.

Mr. HINES. It was not a fact.

Senator KERRY. Thank you very much.

The CHAIRMAN. Mr. Hines, why didn't you or the Park Service look into the briefcase, the bag, Vince Foster's case?

Mr. HINES. My understanding of the reason we did not look into it is we were not allowed to look into it.

The CHAIRMAN. Thank you.

Senator Sarbanes, do you have any other people?

Senator SARBANES. Yes. I have Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman, Senator Sarbanes. I am going to try to be brief so we're not here on the next anniversary and we get through this process. At the outset, I want to join my colleagues in thanking all of you for your participation here. This is the second time we've done this. This is the second year, and once again for the record, Sergeant Braun, I think we should let the conspiracy theorists know we are not related in any way. We did that last year, but I think it's important to set the record straight on that.

The point that I think is important, in listening to you—and I know you've relived these events in your mind and gone over them

time and time again—is that time plays funny kinds of tricks on us. Sometimes things that we are right now going through minute by minute and second by second can go by in a flash, and I'm sure that a lot of what happened to you in that short period of time, those couple of days, went by a lot quicker than these hearings have, certainly, or the conversation after the fact has.

So I just want to talk about, really, how you viewed a couple of issues that have come up in the context of the time then, without the benefit of hindsight, because I think that is very important. The first thing is that on several occasions we heard Marcy Park referred to as a crime scene. In your answers to Senator Boxer, all three of you said as far as you were concerned, at the time it was a suicide and you did not treat it as a crime scene.

Mr. ROLLA. No, that's not——

Senator MOSELEY-BRAUN. I think that's important——

Mr. ROLLA. That's not true.

Senator MOSELEY-BRAUN. That's not true? What you said in response to Senator——

Mr. ROLLA. No, that's not true. Fort Marcy Park was treated as a crime scene.

Senator MOSELEY-BRAUN. It was treated as a crime scene. I'm sorry, I used the word homicide. Was it treated as the scene of a homicide or—is there a difference in the way you treat the scene of a homicide versus the scene of a suicide?

Mr. ROLLA. It was treated as a death scene with an open investigation, and they're treated the same way.

Senator MOSELEY-BRAUN. But at the time you thought of this whole event as a suicide, you were not viewing it as a homicide or any foul play or anything like that?

Mr. ROLLA. Again, keeping an open mind after clearing the scene and viewing all the physical evidence of what we had, everything leaned toward suicide at that time.

Senator MOSELEY-BRAUN. That's what you told Mr. Foster's wife at about 10 p.m. that night?

Ms. BRAUN. Yes.

Mr. ROLLA. An apparent suicide.

Senator MOSELEY-BRAUN. With regard to the request, Sergeant Braun, the request that the office be sealed or secured, there is a difference between securing an office, sealing an office and searching an office, certainly, and that's been talked about a little bit. You were earlier saying that since the time this happened, you've been promoted, and you learned as supervisor you have to ask people a lot of questions to know that they understand your meaning.

Are you confident that Mr. Watkins understood your meaning when you made the request to him regarding sealing the office?

Ms. BRAUN. Not at this time.

Senator MOSELEY-BRAUN. Did you ask him to seal or did you ask him to secure the office?

Ms. BRAUN. I don't know what exact words I used at the time. I basically indicated that we were interested in the office and going back through the office in the morning.

Senator MOSELEY-BRAUN. Even though that wasn't the procedure, that was a woman's intuition that it would be the right thing to do, to shut it down at that point?

Ms. BRAUN. Yes.

Senator MOSELEY-BRAUN. You have testified that you didn't hear that request, but in any event the office was, in fact, secured about 30 minutes after that request was made to David Watkins, about 11:41. You talked to David Watkins about 10:30 or thereabouts?

Ms. BRAUN. I'm confused. Are you referring to Detective Markland's report? Because the way I interpreted Detective Markland's report when we had it on the screen earlier was it was secured all day after 10 a.m.

Senator MOSELEY-BRAUN. We have 11:30 p.m., the testimony was that it was secured at 11:30. The office was locked at 11:41. That comes from the depositions. You were not aware that, in fact, it was locked 30 minutes after you made the request of Mr. Watkins.

In any event, the next morning, by 10 a.m. the next morning, there was a guard posted there, and by 11 a.m. the next morning there was a locksmith called in and the locks changed.

Mr. ROLLA. Yeah, but before 10 a.m. the secretary and Mr. Nussbaum had already been back in the office.

Senator MOSELEY-BRAUN. I'm not debating that, I'm just saying in terms of the time of what transpired, we're looking at 10 p.m. You go into this horrible, chaotic scene. You mention in passing that it might be a good idea to shut this down. Mr. Rolla doesn't hear it; David Watkins doesn't remember it, but, whatever, it was a chaotic scene. It wasn't like everyone was being coldly efficient at the time.

Ms. BRAUN. That's correct.

Senator MOSELEY-BRAUN. In any event, 30 minutes after you made that request, the office was locked. By the next morning at 10 a.m., there was a guard posted. By 11 a.m. the next day, the next morning, July 21, 1993, the day after, there was a locksmith brought in and the locks were changed.

The Secret Service record has it? Yeah, yeah, so we can go through—these were not things you were party to. I'm not suggesting you were, but I'm trying to get to the sense of the timing of all of this.

In hindsight, it seems like all of this was drawn out over a long period of time, but really what we're talking about were conversations that happened in a narrow window of time and that may have zipped by in ways that may not have been—that may not now seem to be all that evident. But the Secret Service record does show at 11:41 that the office was secured.

Again, I said I was going to be brief, so I'm going to try to ask one other little question, and that's of you, Mr. Hines. In your report—I'm going to read a sentence to you that comes out of your report that was—this is a supplemental criminal incident report, a record that was done the day after. It doesn't say on here when it was written. It just says the day of the incident.

In any event, what you said here was, "Originally, we had responded to the White House on Wednesday morning, July 21, to examine his office." This is yours; right? This says Investigator Hines. This could not be his. I don't know, based on what I see here. Is that Mr. Hines? Oh, it's Captain Hume. Mr. Hines, I take it back. This is not you. It's Captain Hume, so I guess I'll have to ask the question of him. I was going to ask the question what did he mean

by "originally, we responded to the White House on Wednesday morning," because it sounds like there were efforts made to try to lock things down.

I don't have any further questions, except to say that based on everything I've heard, I have a sense that you guys did everything you could do under the circumstances at the time.

With the benefit of hindsight, do you think at the time, based on your knowledge at the time, how you saw things when these things were going on, do you feel that you did what you thought was the right thing to do, the proper thing to do, the police personnel thing to do at the time that this incident occurred?

Ms. BRAUN. Yes, we did what we had to do.

Mr. ROLLA. Yes, I believe so.

Mr. HINES. Yes.

Senator MOSELEY-BRAUN. Thank you very much.

The CHAIRMAN. Senator Sarbanes.

Mr. ROLLA. Excuse me, Mr. Chairman. Can we take a 5-minute break?

The CHAIRMAN. I believe we're very close to wrapping up, and I want to keep it going. If you wish to be excused for 5 minutes yourself, certainly, you may do so, and if anybody wants to ask you questions, we'll come back to you. OK?

Mr. ROLLA. Thank you.

Senator SARBANES. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. First, I would just like to underscore what Senator Kerry mentioned about the note that was found. There is no reason why anyone would want to delay finding the note. There is nothing in the content of the note to suggest this. Major Hines, Detective Markland is one of the Park Police; is that correct?

Mr. HINES. Yes, he is.

Senator SIMON. In your deposition, you say that you remember Detective Markland stating that he watched whoever it was search that briefcase.

Question: Bernie Nussbaum, does that ring a bell?

Answer: Well, it was Nussbaum or one of his aides. Nussbaum was there. He watched—he, that is, Detective Markland watched him search that briefcase, and they didn't see anything.

I think it simply underscores that there is no attempt to hide anything here.

Major Hines, let me read from your deposition of June 21, and I'm going to skip a few sentences in here, but if I take them out of context, and I'm trying not to, you correct me. The question is asked of you, "Do you feel that there was obstruction of your investigation?"

Answer: I take it, by what you said, that means——

You interrupt and say:

Based on what I know, I would say not. Based on what I personally know, I would say no.

Question: OK. Do you have—do you feel there is any evidence of obstruction?

Answer: I don't think so. I'm just saying based on what I know about the case.

Question: Sure. It would be fair to say that this could have been handled differently. This could have been handled better?

Answer: It could have been handled better.

Is that still an accurate reflection of your views?

Mr. HINES. That is still my reflection. As far as the legal evidence of proof and obstruction of justice, I feel we would have a hard time to make such a case in this instance on the search of that office. But I think things could have been handled better.

Senator SIMON. If someone were to ask you is what happened simply some sloppiness, or is there a conspiracy to cover up, what would your answer be?

Mr. HINES. I don't feel there's a conspiracy, but I feel that we had a perception at that time. Our perception was why don't we have a little bit more cooperation, and we've always said that.

Senator SIMON. It could have been handled better, in your words, but you do not feel there was some conspiracy taking place?

Mr. HINES. Yes, Senator, that's my feelings.

Senator SIMON. Let me read, Mr. Rolla, from your deposition on June 20. The question was asked:

"Were there statements you saw in the media that were"—did you see statements in the media about the Park Police moving the body or something along those lines?

Answer: Yes.

Question: What was the reaction to those type of press stories in your office?

Answer: First, when it came out in the New York Post—it's a rag of a newspaper anyway; they're laughable—but, as they persisted and spread to other newspapers, it was very frustrating, quite angry, angered at our officials, our higher officials for not stepping up and holding a news conference and saying hey, this is all bull. We've already closed this case out. This is a result of the investigation. You're welcome to see them, whatever else. That didn't happen.

And, thus, we took a beating. The name Park and Park Police indicating we were a bunch of park rangers that didn't know what we were doing. Well, that's not the case. We work in urban areas, in New York, Washington, DC, and San Francisco. And we're not rangers. And rangers do a fine job where we're at. But we work in urban areas, and as you know, because I've worked with you as a U.S. Attorney, we handle the same things that every police department handles—to a lesser degree because of our jurisdiction, but we're also smaller. So, on a scale, same scale, we handle quite a few incidents, major and minor.

So it's frustrating. It was annoying. I don't know how many times to how many people—whether they're police officers, other friends, relatives or other people—I had to explain this case to. And listening to the radio stations, G. Gordon Liddy and Rush Limbaugh, it's very annoying being slammed like that when people that listen to them have no idea who we are and then believe all that crap. So that's very annoying, very frustrating.

Let me ask the three of you, and you can speak, Major Hines, or Sergeant Braun or Mr. Rolla. There are people, when we say Park Police, who think your job is cleaning up candy wrappers and making sure somebody doesn't start a bonfire. When we talk about your work as Park Police—and I think those of us who have seen the three of you in action here today have the sense of a very professional, competent police department—but when you talk about the Park Police, what kind of a group are you talking about?

Mr. HINES. Senator, when you talk about the Park Police, you're talking to a very dedicated group of men and women for upholding the law and enforcing laws of any police department. We are probably most like any large city police department in the Federal Government as far as general, all-purpose, all full-service police work. We are very proud of our job, and when we came under attack last year, we were very sensitive to it.

Some of the times when we didn't respond, this was about the time when the Independent Counsel came into being, and we felt

that it was just good sense not to respond because we felt there was going to be further investigations.

Senator SIMON. But you are a professional police department in the same sense that any city police department or FBI or any other group is; is that correct?

Mr. HINES. Yes, Senator, we are.

Senator SIMON. Sergeant Braun or Mr. Rolla, do you want to add anything?

Ms. BRAUN. I guess evidence that we were called upon by Eric Holder to assist Metropolitan Police last summer in the Fifth District with the crime problem and did so very successfully shows that we are a professional police department.

Senator SIMON. I see my time is about up, and I thank the three of you for the job you're doing and for your testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I think we're winding up. I have just a couple of questions. I'm going to yield a little time to Mr. Ben-Veniste. Senator Dodd apparently has a question or two, and I assume we'll conclude with this panel.

I want to put a question to Sergeant Braun and Mr. Rolla. When you were at the house and people were on the phone, were you aware that a very concerted effort was being made to notify family and friends, both here in Washington and in Arkansas, about what had happened so people did not learn about it on the television or over the radio?

Ms. BRAUN. I am today. I was not at the time.

Senator SARBANES. You did not know, for instance, that a very intense effort was being made to find someone who could go to the home of Vince Foster's mother, who was quite elderly and had been ill?

Ms. BRAUN. That I was made aware of on the way out the door.

Senator SARBANES. Pardon?

Ms. BRAUN. That's what Mr. Watkins made us aware of on the way out the door.

Senator SARBANES. That they were trying to get someone there? So, even when she received a call to tell her someone would be with her because they were very much concerned about the state of her health——

Ms. BRAUN. Right.

Senator SARBANES. But you found that out as you were leaving?

Ms. BRAUN. That's correct.

Senator SARBANES. Mr. Rolla?

Mr. ROLLA. Yeah, I'm aware—as we were leaving we talked to Mr. Watkins, and he stated they were trying to get somebody with his mother. He asked us not to do a press release, which we called our field commander and told him not to do, but before we got back to our office, the White House had done a press release.

Senator SARBANES. Now, there also was an effort made to find the Foster sons. Were they at the house?

Ms. BRAUN. No, they were not.

Mr. ROLLA. They were in Georgetown somewhere.

Senator SARBANES. They were somewhere in Georgetown. I take it that extended efforts were being made to try to locate them. Ob-

viously this story, once it reached the media, would be a lead story on the television and on the radio; correct?

Ms. BRAUN. Yes.

Mr. ROLLA. Yes.

Senator SARBANES. That's very clear. These intense efforts were being made to locate the family and, as I understand it, friends and so forth, colleagues, in order to let them know what had happened. You understood at least part of that by the time you left the Foster home; is that correct?

Ms. BRAUN. Yes.

Senator SARBANES. I yield to Senator Dodd.

Senator DODD. Again, I'm not sure you're aware of what I'm about to ask. First, I'll ask if you're aware of it and, if not, maybe I'll tell you about it and get your reaction to it.

That is, dealing with the cleaning service that had come to Mr. Foster's office and had routinely emptied out wastepaper baskets and whatever else they do when they clean up an office. Were you aware that had occurred sometime between 10:40 and 11:40 that night?

Ms. BRAUN. No.

Mr. ROLLA. No.

Senator DODD. In fact, it did. It goes to the intent issue again, what we're driving at here, and we're asking you to help us draw the conclusions. Because you are professionals and you deal with these matters, I wanted to raise the issue of what happened here, and let me just share it with you.

That, in fact, cleaning people did come and clean out the office as they do routinely. Unaware of what had occurred, they removed the trash, as they do, from the offices. White House personnel, not at the direction of any outside policing authority, checking with senior people, recaptured that trash and left it and put it into the Office of the Deputy Chief of Staff, I believe is the case.

Now, those are facts. I'm not making those up, obviously. Knowing that, without the direction of anyone, is that the kind of thing that people should have been doing in this situation? Is that the kind of thing you would have asked to have been done?

Ms. BRAUN. Yes.

Mr. ROLLA. Yes.

Mr. HINES. Yes.

Senator DODD. As you're looking at this question—and Senator Simon raised the issue again—as I understand it, Major Hines, and I'm going to ask Detective Rolla and Sergeant Braun the same question, that as you look now at the totality of everything that's happened here, clearly you've indicated to this Committee that this investigation could have been done a lot better. Though you appreciate and understand the venue, the place where the office was and so forth, that clearly it could have been done a lot better. That's the general conclusion of all three of you; is that not correct?

Ms. BRAUN. Yes.

Mr. HINES. That's our feeling, yes.

Mr. ROLLA. Yes.

Senator DODD. But, as you now draw that same conclusion, is there any question in your minds about some corrupt intent here

or an intent to hide or deceive the Park Police or any other policing agency based on what you now know and the totality of this?

Mr. HINES. Based on what we now know, I don't believe that.

Senator DODD. How about you, Detective Rolla?

Mr. ROLLA. I don't feel comfortable answering that. From what I know, I don't believe—I don't know if anybody—I can't say if people were in that office, and I can't say if somebody removed documents, if somebody did something. As far as a death investigation goes, no, we were not—there was no conspiracy or corruption, but something further, I don't know. I don't feel comfortable answering yes or no.

Senator DODD. You wouldn't draw a conclusion that there was a corrupt intent?

Mr. ROLLA. No, I guess I wouldn't.

Ms. BRAUN. As far as my involvement in the investigation, which was the immediate night of and that morning, I would say no.

Senator DODD. Thank you very much.

Thank you, Mr. Chairman.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. So, really, to sum up on this issue, as you walked out the door at 11:10 that evening, the President had arrived, and Mr. Watkins obviously had to be attentive to the fact that the President of the United States was there. You believe you mentioned to him that the office ought to be either locked or the door closed and that people would be there the following day to resume the investigation. That's where this record ends; correct?

Ms. BRAUN. I know I asked him that.

Mr. BEN-VENISTE. With respect to your view, Major, as the ranking official on this panel, in terms of whether your investigation into Vincent Foster's death was obstructed, I take it your answer is that it was not?

Mr. HINES. No, it was not. We had a thorough enough investigation to determine that it was a suicide.

Mr. BEN-VENISTE. In connection with the papers that were of relevance to the Park Police in Mr. Foster's office, it is correct that Mr. Braun and others reviewed in Mr. Hamilton's office the material that they wished to see regarding Mr. Foster's diary, his appointments and the related material; correct?

Mr. ROLLA. I reviewed Lieutenant Kass' material. They told us we could review what was taken from his office, not necessarily everything we would have wanted. I don't know what we would have wanted. We didn't get that chance.

Mr. BEN-VENISTE. You weren't present on the 22nd, Detective?

Mr. ROLLA. In the office, no, I was not.

Mr. BEN-VENISTE. There were 13 people in the office when Mr. Nussbaum went through those materials; correct?

Mr. ROLLA. I believe so.

Mr. BEN-VENISTE. OK. You weren't there and Major Hines was not there either, and you don't know what was requested. You don't know whether by that time people had made the request that you said you would have made: let's look on his desktop, let's look in the drawers, let's look around to see if he left any material and let's look at it. You don't know what they asked for specifically; correct?

Mr. ROLLA. No. You'll have to ask Detective Markland.

Mr. BEN-VENISTE. In terms of your investigation and understanding that this is not a perfect world when you get into issues of executive privilege, attorney-client privilege, the privacy rights of Mr. Foster, whose attorney was present—the family attorney was present during the search on the 22nd—you now had the FBI, the Secret Service, the Department of Justice, the White House Counsel, the private attorney all crammed into Mr. Foster's office.

But if it had been a situation where you would have been allowed access and there wasn't all of these issues of executive privilege and attorney-client privilege and precedent to deal with, and an attorney had simply invited you in and said have a cup of coffee; this is a horrible event. We're all in mourning and in shock. Let's look at his desk. Is there a note? Let's look in the drawer; let's look for his appointment calendar.

If you had gotten that material earlier on without all these other agencies being brought into it, would that have satisfied you? Sergeant Braun?

Ms. BRAUN. If I was involved in that part of it, yeah.

Mr. BEN-VENISTE. Your sense as the week grew on, when there were criticisms in the press about the Park Police and there was all this publicity, was that you may have been unfairly targeted for not being as diligent in the investigation when there were things beyond your control that were occurring because of these issues of privilege and sensitivity; is that so?

Ms. BRAUN. That's correct.

Mr. ROLLA. That's correct.

Mr. HINES. That's correct.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. No, I think we're complete on this side.

The CHAIRMAN. We also are finished. I think we could go over and over the various nuances as it relates to obstruction or interference, but I think we have a good idea factually as to what took place, what your roles were. I believe that you did the best you possibly could under very difficult circumstances.

I want to commend all of you for your candor, your integrity and honesty as it relates to both carrying out your duties and for your testimony here, and the written depositions that you have given us previously.

We thank you.

Senator BENNETT. Thank you.

Mr. ROLLA. Thank you.

Mr. HINES. Thank you.

The CHAIRMAN. We'll now bring on your second panel.

Senator SIMON. Mr. Chairman, what is your——

The CHAIRMAN. Senator Sarbanes, on behalf of the Minority, has requested that we take a break.

So I intend to swear in this panel and we'll take a break until 2 p.m., but at 2 p.m. sharp we will resume the proceedings. So just for the purposes of——

Senator SARBANES. Mr. Chairman, let me make a point because all our people came on the premise that we would go until 1 p.m. That was the understanding, I think, of all the Members. Obvi-

ously, we're going to have to start going longer if we're going to work through our list, but I think we need a little more notice. I know some of the Members have made commitments for this afternoon.

The CHAIRMAN. Senator, let me say this to you. I have no intent, as I think we've demonstrated, of culling or curtailing any opportunity from any Member to pose any question that he or she deems important, but I do understand unless we get this started and continue it, that this could drag out interminably. So I don't believe by proceeding we're cutting off anybody's rights to proceed and raise questions and issues later on, but I do think we have to get it started.

I believe we're going to have a motion on the table at 2:30. At least we'll be able to get a half hour because we'll have to take a break at 2:30. It is not my intent, if we need more time to complete this, to take this into the evening, but I do intend to move forward with it.

Senator SARBANES. Here's what I'd suggest, Mr. Chairman. I would suggest that, in the circumstance, we start this panel first thing Tuesday, but then alert the Members that, in fact, these hearings will not end at 1 p.m. and may well go over into the afternoon period. Members would know that and would have been able to plan their schedule accordingly.

The CHAIRMAN. I'd have to first make an inquiry. Mr. Watkins, you've come in from California. Is that not true?

Mr. WATKINS. That's correct.

The CHAIRMAN. What, if anything, will putting you over until Tuesday do?

Mr. WATKINS. I would want to return and come back instead——

The CHAIRMAN. You'll be able to do that.

Mr. WATKINS. I can do that, yes.

Senator SARBANES. Why don't we do that and alert the Members, and then they'll know. They'll be on notice.

The CHAIRMAN. Senator, let us at least lay the foundation, since we have at least 1 hour until the next vote, and get the testimony from the witnesses and our presentations on each side. This will not impinge on any of the other Members, and at 2:30 we have a vote. We can save a lot of time.

I have attempted to be accommodating, and I will do that, but I feel that unless we begin to move, we just won't complete the work that we've scheduled to be finished before we leave. I don't want to keep us in, and I don't know how many of our brethren would stay during the projected recess period, which I think is the second week or the third week in August. But this is a deliberate pace, so let me swear in the witness.

Senator SARBANES. Let me say this. I don't differ from that, and we need to pick up the pace, obviously. But I think the way to do that is now to alert our Members that the 1 p.m. time that was set, which we had discussed before and which, of course——

The CHAIRMAN. The reason for it——

Senator SARBANES. —the Chairman is very clear to have set that 1 p.m. time and we acceded to that, that beginning next week, that's not going to happen.

Now, this panel is going to have to be back next week in any event, obviously, and it would seem to me if we could begin them on Tuesday morning promptly at 9:30 and proceed from there, we could carry through. That would avoid a very serious problem with a number of Members. I'll have to be honest, I, myself, operating on the understanding from the Chairman, made plans for this afternoon.

The CHAIRMAN. Let me point out that it's 1:30 now. We can swear in the witnesses. We will take less than our half hour between us. I know Senator Gramm has some questions. You have a half hour that generally has been spent between yourself and Mr. Ben-Veniste, and/or if we break without you using that, that we would start on Tuesday with your 30-minute opening. But I would like to continue this.

Senator SARBANES. But none of the Members are here to hear it, Mr. Chairman. I want to be fair to the Members operating on what the Chairman told them. The attendance has been very good. In fact, I want to underscore the commitment of Members for people who are watching this. In fact, I want to register for the record that Senator Murray this morning had indicated that a matter had come up on the Floor which required her being present, and that explains her absence.

The CHAIRMAN. The same is true for Senator Mack, who's managing the bill.

Senator SARBANES. Senator Murray is the Ranking Member with Senator Mack.

The CHAIRMAN. They both have been on the Floor. There are those occasions when Members will not be here out of necessity. One of the reasons we've attempted to hold these hearings, despite some speculation that there are other reasons, was so we could continue to conduct the business of the Senate as we're moving toward a close.

I want to serve notice that if Members cannot be here, we are going to proceed. They have to understand, the Chair will attempt to be as accommodating as possible. I say this: The Ranking Member has demonstrated every possible consideration as well. This is not a one-way street. In order to move this, we will, I think, have to stay later. I hope it's not much later, but I think we're all going to have to be here. If we're not here, we're going to continue to move this process. The Ranking Member feels very strongly. Yes, Senator Shelby.

Senator SHELBY. Mr. Chairman, I know you want to move these hearings, and I agree with you. I think most people have been real cooperative—I guess my day's ending now. This panel, I believe, is very important to what we're going to try, on both sides of the aisle, to elicit here, and I personally would rather get into them and go all day or all night than break it, but you're the Chairman.

The CHAIRMAN. I think the Senator makes a good point, that probably if we start and then break, that's not going to be in the best interest. The Minority feels strongly about this, even though he has put it in firm but gentlemanly terms, so, therefore, I will not try to get at least an hour in. We will recess until Tuesday. It's my intent to start Tuesday at 9:30.

I apologize to the panel. We fully had hoped that we would be able to get you in, and particularly you, Mr. Watkins. It means you're going to have to make another trip back, but at least you'll get to spend the weekend back in California. We stand in recess until Tuesday at 9:30.

[Whereupon, at 1:35 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Tuesday, July 25, 1995.]

[Prepared statements and appendix supplied for the record follow:]

PREPARED STATEMENT OF SERGEANT CHERYL A. BRAUN, UNITED STATES PARK POLICE

Good Morning, Mr. Chairman and Members of the Committee.

I am Sergeant Cheryl A. Braun with the United States Park Police. I have been a member of the United States Park Police for ten years. During the course of my career, I was assigned for six years to the Baltimore/Washington Parkway as a patrol officer. My next assignment was just under two years in duration as a plain clothes investigator in the Criminal Investigations Branch.

In August of 1993, I was promoted to the rank of sergeant, and assigned to the Baltimore/Washington Parkway. In May of 1994, I was assigned to the Crime and Violence Task Force, which worked in the Fifth District of Washington, D.C. In October of 1994, the Crime and Violence Task Force ended and I was reassigned to the Central District, which works the Mall and downtown area of Washington, D.C. My current assignment is as a squad sergeant at the Central District.

I have a Bachelor of Arts Degree in Criminal Justice from the University of Maryland. In 1985, I attended and completed the Prince Georges County Police Academy, and the Federal Law Enforcement Training Center for basic police training. In 1990, I attended the Federal Law Enforcement Training Center for the Criminal Investigators School. During my career, I received training on child abuse investigation, robbery and burglary investigation, a homicide seminar through Harvard and Police Associates, and other police patrol related training.

I am here today at your request to assist in answering questions you may have regarding Mr. Vincent Foster's suicide. As a plain clothes investigator, I was notified and responded to the scene of the suicide at Fort Marcy on July 20, 1993. After conducting the preliminary investigation with Investigator Rolla, we responded to Mr. Foster's home to make the death notification. After July 20, I had no direct involvement with this investigation. The investigation was subsequently assigned to Detective Markland.

Thank you.

PREPARED STATEMENT OF DETECTIVE JOHN C. ROLLA, UNITED STATES PARK POLICE

My name is John C. Rolla. I joined the United States Park Police in 1984. I hold the rank of Detective in the Criminal Investigations Branch, where I have been assigned since 1988. I have served in the Narcotics and Vice Unit and I have been assigned to a Drug Enforcement Administration Task Force.

I have received specialized training at the FBI Academy and have worked on a number of high level drug conspiracy cases and smuggling operations. I was promoted to plainclothes investigator in 1990.

I have completed specialized training courses in narcotics investigation and criminal investigation at the Federal Law Enforcement Training Center in Glynco, Georgia, as well as homicide investigation courses through the Washington D.C. Metropolitan Police Department.

Presently I am assigned to the Major Crimes Section of the United States Park Police Criminal Investigations Branch.

PREPARED STATEMENT OF MAJOR ROBERT H. HINES, UNITED STATES PARK POLICE

Mr. Chairman and Members of the Committee, I am Major Robert H. Hines. I joined the United States Park Police in 1967, after serving in the United States Marine Corps and the Maryland Army National Guard.

From 1985 to 1991, I was the Commander of the United States Park Police Criminal Investigations Branch. Since 1991, I have been the Commander of the Office of Inspectional Services, United States Park Police. I also serve as the Force Public Information Officer.

On July 20, 1993, the body of Mr. Vincent W. Foster was found at Ft. Marcy Park in Virginia. After investigation, we concluded that Mr. Foster committed suicide. This conclusion was arrived at based on conditions at the scene, the Medical Examiner's findings, and other information gathered in the course of our investigation.

We found no evidence to suggest that Mr. Foster was murdered; we found no evidence that foul play was involved in his death. I want to assure the Committee now that not one single shred of evidence has come to the United States Park Police warranting a reexamination of our findings or the conclusion of Mr. Fiske's report.

After Mr. Foster's death, and after we reported our findings, stories have been circulated in some media alleging, with no supporting evidence, that he was murdered, that his body was moved after death to Ft. Marcy, that there was a conspiracy involved in his death. As we all know, even after the Independent Counsel released the findings of his investigation, fantastic speculations continue to be concocted and circulated.

The Report of Independent Counsel Robert B. Fiske, Jr., concerning the death of Mr. Foster was released in June 1994, after a first-class team of experts examined and re-examined all the evidence and the investigation conducted by the United States Park Police.

In the Report's "Summary of Conclusions" Mr. Fiske states:

> "On the afternoon of July 20, 1993, in Fort Marcy Park, Fairfax County, Virginia, Vincent W. Foster, Jr., committed suicide by firing a bullet from a .38 caliber revolver into his mouth. ... [T]he evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary. This conclusion is endorsed by all participants in the investigation, including each member of the Pathologist Panel."

Following release of the Report, Anthony Lewis of The New York Times wrote:

> "When Robert B. Fiske Jr., ... reported that there was nothing to the horror stories about the death of Vincent Foster, that Foster had indeed committed suicide, I expected that those who had spread the stories would be called to account."

Mr. Lewis then asked, rhetorically, whether those who had "spread ugly fantasies" had apologized; whether the press had held "the spreaders of dirt to account?" More than a year has past and I can answer Mr. Lewis' question with a resounding "NO".

I believe that the prolonged and morbid curiosity with this tragic case has only served to intensify the already enormous grief of the Foster family.

Last year when this Committee held hearings on this matter, I earnestly hoped that -- when those hearings concluded -- Vincent Foster would finally rest in peace and that his family would, at long last, receive the respect they deserve.

Mr. Chairman and Members of the Committee, I can only reiterate my desire to cooperate in every possible way with the hope that, once and for all, we can answer whatever questions remain in the minds of those who have refused to accept Vincent Foster's death as a suicide.

APPENDIX



United States Department of the Interior

NATIONAL PARK SERVICE
HEADQUARTERS, UNITED STATES PARK POLICE
1100 Ohio Drive, S.W.
Washington, D.C. 20242

IN REPLY REFER TO:

JUL 20 1994

Memorandum

To: All Major Crimes Members, Criminal Investigations Branch

From: Assistant Commander, Criminal Investigations Branch

Subject: Death-Investigations Guidelines Manual

A Death Investigations Manual has been published by the Criminal Investigations Branch and deseminated to all Major Crimes Members. All members shall become familiar with the Guidelines Manual. This manual contains the policies and procecures that shall be adhered to in all death investigations. These policies have been formulated based on sound investigatory principles.

Any suggestions that will enhance the policies of the manual are welcome.

U.S. Park Police

Criminal Investigations Branch

DEATH INVESTIGATIONS GUIDELINES

PURPOSE

All deaths shall be considered homicides until the facts prove otherwise. These guidelines are provided as a source of practical procedures to be followed when being notified of a death, and are not all inclusive. Since each death will have unique characteristics, the sequence of these procedures may vary. These guidelines shall be adhered to in all death investigations conducted by the Criminal Investigations Branch, United States Park Police.

CONSISTENCY IN REPORTING

Careful and thorough reporting is essential in the documentation of incidents investigated by Force personnel. The information contained in the reports shall be sequential and include facts that legitimately describe the incident and follow-up investigation. All events that occur during the investigation shall be thoroughly documented. Notes shall be preserved and made part of the investigative case jacket when the case is put to file.

To achieve the goal of consistent reporting, the following format shall be used.

NATIONAL PARK SERVICE

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

1 JUVENILE CASE ☐

2 SYSTEM AREA	3 WHEN DID IT OCCUR	MO.	DAY	YR.	4 YEAR	CASE/INCIDENT NUMBER

5 TYPE OF INCIDENT

6 RECLASSIFICATION OF INCIDENT

ITEM 7 RESULTS OF INVESTIGATION

INITIAL NOTIFICATION

This section should indicate how, when, and by whom you were notified of the incident.

ARRIVAL

This section should tell what time you arrived at the scene/destination, who was there, and what tasks they were performing.

CONDITIONS

This section should describe weather, visibility, ground conditions, and any other significant information.

PRELIMINARY INVESTIGATION

This section should describe what you learned when you arrived.

SCENE

Describe the area so that others reading the report can visualize the surroundings.

BODY

Fix the position of the body. Describe body to include race, sex, age, height, weight, and other identifying information. Include all clothing and its condition. document observable injuries by size, type, and location. Establish identity if known. Tell when and who removed the body, where it was taken, and who pronounced the death.

NOTIFICATIONS

This section should include Medical Examiner information and other notifications. (Next of kin should be addressed in another section.)

HOSPITAL

If response to a hospital is part of the investigation, mention what occurred there and who was involved.

NEXT OF KIN

Tell who you notified, when, and the relationship to the victim. Include addresses and telephone numbers. Mention any significant occurrences during the notification. Document any property release.

(Continued)

8 ARREST(S)	9	10 ID TECH NOTIFIED	11 INVESTIGATOR NOTIFIED	12
☐ YES ☐ NO	☐ LATENTS ☐ PHOTOS			PAGE OF PAGES

13 STATUS ☐ OPEN ☐ SUSPENDED | CLOSED BY ☐ ARREST ☐ EXCEPTION ☐ UNFOUNDED

14 REPORTING OFFICER	BADGE/ID	DATE	15 INVESTIGATOR	BADGE/ID	DATE	16 SUPERVISOR	BADGE/ID	DATE

(3)

* U.S. GPO: 1992-0-825-532/40118

NATIONAL PARK SERVICE

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

1 JUVENILE CASE ☐

2 SYSTEM AREA | 3 WHEN DID IT OCCUR? MO. DAY YR. | 4 YEAR | CASE/INCIDENT NUMBER

4a OF INCIDENT | 5 RECLASSIFICATION OF INCIDENT

ITEM | 7 RESULTS OF INVESTIGATION

INVOLVED PERSONS

This section should identify: victim(s), witnesses, injured, deceased, and arrested individuals. If a vehicle is involved, list passenger information and where each person was seated.

INVESTIGATION

This section should describe your investigation based on the facts. Avoid theories.

8 WARNING(S) ☐ YES ☐ NO | 9 ☐ LATENTS ☐ PHOTOS | 10 ID TECH NOTIFIED | 11 INVESTIGATOR NOTIFIED | 12 PAGE OF PAGES

13 STATUS ☐ OPEN ☐ SUSPENDED | CLOSED BY ☐ ARREST ☐ EXCEPTION ☐ UNFOUNDED

14 REPORTING OFFICER BADGE/ID DATE | 15 INVESTIGATOR BADGE/ID DATE | 16 SUPERVISOR BADGE/ID DATE

4

* U.S. GPO: 1987-0-625-524/41193

ALL DEATH INVESTIGATIONS

RECORD NOTIFICATION INFORMATION

Document how, when, and by whom you were told of the incident and what you were told.

RESPOND TO THE SCENE

Upon arriving at the scene, ensure that the scene is protected. Note exact time of arrival, and list conditions such as weather, temperature, visibility, ground conditions, and other significant information.

PERSONNEL STAFFING

In some major or unusual cases it may be determined that there are insufficient personnel to adequately perform the tasks necessary. If this occurs, the Lead Investigator, through the chain of command, shall request that other Branch members be called in to assist.

NOTIFICATION TO THE MEDICAL EXAMINER

Through the Communications Section, notify the local Medical Examiner for the jurisdiction (County) in which the body is located. He/she may or may not respond to the scene. In many cases, they will request that the body be transported to a hospital for examination at a more convenient time. Each jurisdiction varies on removal services; therefore, the local Medical Examiner shall be asked by whom he/she wishes the body transported and to what destination.

LIST PERSONS AT SCENE

List officers, ambulance personnel, family members, witnesses, and others at the scene and what tasks they are performing. (Keep witnesses separated.) Talk with officers to determine what has happened prior to your arrival. This may be the appropriate time to assign officers/investigators to canvass and/or record tag numbers of vehicles in the area.

DESCRIBE THE SCENE

Document the surroundings so that others reading the reports will be able to visualize the area. Indicate directions and the position of the body and any evidence present. Be alert to secondary crime scenes.

CRIME SCENE SEARCH

Confer with the Identification Section personnel to coordinate the most suitable approach to the scene and the collection of evidence.

Photographs

Polaroid photographs shall be taken. These will be of great assistance until other photographs are developed. Numerous 35mm photographs shall be taken from all angles and distances. In all deaths, video taping shall be performed.

Drawing

Ensure that a crime scene sketch is completed.

Other

Evaluate the need for special equipment such as metal detecting equipment.

*If the scene was examined at night, revisit for a daylight search. At this time, consider aerial photographs.

EXAMINING THE BODY

*Do not disturb the body until photographs are taken and videotaping is completed. Do not move the body if the Medical Examiner is responding.

Document the description, race, sex, age, height, weight, and other identifying information. Note livor mortis, rigor mortis, and any blood/body fluid location. List observable wounds and/or injuries by size, type, and location. Document the presence of any weapon(s) and/or contraband. This may be the appropriate time to place a body/evidence tag on the body. If trace evidence is suspected on the hands, they shall be bagged with paper bags. When describing the body, do not guess; if you don't know what something is, use terms like "appears to be." If the body is identified, document how it was done (e.g., photo ID, friend, relative).

HOSPITAL

In some cases, the body will have been transported to a hospital. It is imperative that someone be assigned to respond to the hospital as soon as possible. If the body has been pronounced dead, each person who had contact with the deceased shall be interviewed to determine if anything was said before death. Obtain the name of the attending physician and who pronounced death and at what time. Once the body is in a suitable location, it shall be examined thoroughly and all the findings shall be documented (see "Examining the Body" section). List any property or evidence

recovered and from where, what time, and its condition. If a body/evidence tag has not been placed on the body, do it at this time (see "Body/Evidence Tag" section).

BODY EVIDENCE TAG

In each death case, a tag shall be placed on the body. The tag shall be placed in an obvious location so that it can be easily seen. It shall contain, at least, the name and date of birth of the deceased (if known), the date, time and location of death, the probable cause of death, the name and phone number of the Investigator, and the case incident number.

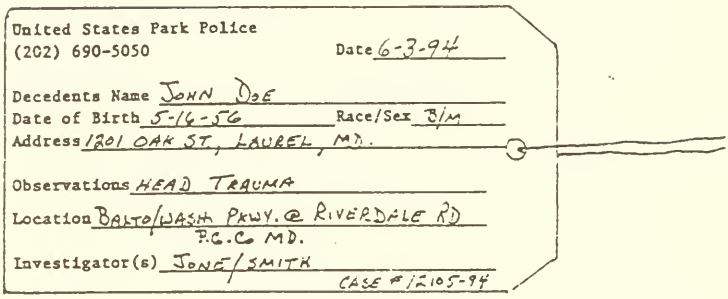
NOTIFICATION TO THE PROSECUTOR

Once jurisdiction has been determined, the proper prosecutors office shall be notified in a timely manner. In unusual or significant incidents, the prosecutor may wish to respond to the scene. Evaluate the incident to determine if immediate notification shall be made.

AUTOPSY ATTENDANCE

A member of CIB/ID shall be present during the post mortem examination of every homicide, suspicious death, suicide, and most accidents. The member of CIB/ID can furnish the pathologist with a complete description of the death scene, along with available photographs. At this time the member of CIB/ID can indicate those materials that he/she believes are essential to the investigation. During the autopsy, the member can have direct transfer of all evidence material. The member, during the autopsy, shall take photographs that may enhance solvability and support prosecution. In some cases, the Medical Examiner may determine that it is not necessary for a member to be present. This shall be evaluated on a case-by-case basis by a supervisor in the Criminal Investigations Branch. Items collected (including clothing) shall be properly marked, packaged, and delivered to the Identification Section for evaluation. A complete set of fingerprints shall be obtained from all homicide and suicide victims. In other death cases, when identification may be an issue, a complete set of fingerprints shall also be obtained. This shall be performed so as to not disturb trace evidence. *If warranted, obtain blood and hair samples.

Sample


United States Park Police
(202) 690-5050
Date 6-3-94
Decedents Name JOHN DOE
Date of Birth 5-16-56
Race/Sex B/M
Address 1201 OAK ST, LAUREL, MD.
Observations HEAD TRAUMA
Location BALTO/WASH PKWY. @ RIVERDALE RD
P.G.C. MD.
Investigator(s) JONE/SMITH
CASE # 12105-94

United States Park Police
Canvass Questionnaire

Case Number_____

Name_____ Date of Birth_____

Address_____

Home Phone_____ Work Phone_____

What knowledge do you have about this crime?_____

_____

_____

_____

_____

Do you know the victim? () Yes ()No
(If yes, explain relationship.)_____

_____

Do you know who committed this offense? () Yes ()No
(If yes, explain.)_____

_____

_____

Was signed statement obtained from this witness? () Yes ()No
(If witness has any information about the crime, he/she should be asked to furnish a written/typed/recorded statement.)

Reporting Officer _____

Date_____ Time_____

HOMICIDE INVESTIGATIONS

In addition to the procedures in the "All Death Investigations" section, the following are additional guidelines for Homicide Investigations.

AREA CANVASS

In most cases, it is appropriate to canvass the area to identify any witnesses to the incident. Generally there are sufficient personnel at the scene of a major incident that assignments to canvass can be made at that time. Investigative personnel shall be the first choice for this assignment. Officers with competent interviewing skills may also be used. A canvass questionnaire may be of benefit to document this task. If possible, the canvass shall be performed before the crime scene is released in the event that information is provided that will direct the crime scene searchers in a certain direction. A revisit to the area shall occur in the event that people who have information are not at home during the initial canvass.

NOTIFICATION TO LOCAL LAW ENFORCEMENT AUTHORITIES

In all homicide cases, the local law enforcement authorities for the jurisdiction shall be notified. This is not only a matter of courtesy, but the agency may lend assistance with pertinent information and leads. This process shall by no means cause the case to become a joint investigation. On the primary jurisdiction of the Force, (except Washington, DC), the incident shall be the sole responsibility of the United States Park Police.

VEHICLES INVOLVED

If it is determined that a vehicle is involved in a homicide incident, either the victim's or the perpetrator's, it shall be considered crucial for evidentiary reasons and shall be processed in accordance with policies of the Identification Section.

WHEN AT RESIDENCE

When making notification to the next of kin, the member shall ask the survivor if they may examine personal effects of the deceased for any possible clues that may assist in the investigation. The examination shall include, but not be limited to, personal phone books, notes, photographs, letters, and contraband. Question the survivor about the last time the decedent was seen, the decedant's habits, friends, enemies, and any reason there might be a motive for the death. Determine if the decedent lived or frequented another location. Visit that location.

FUNERAL

A detail shall be assigned to monitor the wake and funeral of homicide victims. This will enable investigators to identify friends, associates, and possibly suspects.

In addition to the procedures in the "All Death Investigations" section, the following are additional guidelines for the investigation of a Suicide.

CLASSIFICATION OF INCIDENT

The classification of suicide is the responsibility of the Medical Examiner. He/she shall be furnished with all information of the investigation that suggests suicidal intent.

AREA CANVASS

In most cases, it is appropriate to canvass the area to locate any witnesses who may have seen or heard something related to the incident. Generally, there are sufficient personnel at the scene of a major incident that assignments to canvass can be made at that time. Investigative personnel shall be the first choice for this assignment. Officers with competent interviewing skills may also be used. A canvass questionnaire may be of benefit to document this task. If possible, the canvass shall be performed before the crime scene is released in the event that information is provided that will direct crime scene searchers in a certain direction. A revisit to the area shall occur in the event that people who have information are not at home during the initial canvass.

SUICIDE NOTE

If a note is located, it is to be collected so as to preserve any latent fingerprints. A known sample of the handwriting of the victim shall be obtained for comparison purposes. The original note shall be copied and preserved, the copy then becomes the working copy.

Note Comparables

Often a direct note is not located during an investigation in a suicide. Certain items are sometimes equivalent to a note, such as a Bible, Rosary, flag, drawing, or other tangible item. These items shall be considered evidentiary.

VEHICLES INVOLVED

If it is determined that a vehicle is involved in a suicide incident, it shall be considered crucial for evidentiary reasons and shall be processed by the Identification Section.

INTERVIEWS (Looking for Clues)

Residence

During the notification to the next of kin, ask the family members about any changes in mood, personal problems, medical conditions, previous suicide attempts, and other pertinent information. Ascertain if the victim was being treated by a physician and record the physician's name for a later interview. Ask the family if you may examine the personal effects of the victim for any clues that may corroborate suicidal intent. Do not overlook areas such as trash cans. If a weapon was used, ask the family about its existence. At this time, obtain a copy of the victim's handwriting.

Place of Employment

For a complete and comprehensive investigation, an investigator shall visit the place of employment of the deceased. It may be necessary to interview friends and co-workers to determine unusual behavior or mood changes of the victim. When conducting interviews at the place of employment, the investigator shall organize the on-site activities with a supervisor at that location. While talking with the supervisor, a request shall be made to examine the victim's work area. This should be done in a dignified and unobtrusive manner.

VEHICULAR SUICIDE

Be alert that some motor vehicle accidents are used to disguise the intentional taking of one's own life. In cases where this is a possibility, a thorough background investigation of the victim shall be completed.

MOTOR VEHICLE FATALITIES

In addition to the procedures in the "All Death Investigations" section, the following are additional guidelines for the investigation of Motor Vehicle Fatalities.

DESCRIBE THE ROADWAY

Record the number of lanes and in which direction they proceed. List the speed limit and the design of the roadway. Document any roadway lines and any curvatures, or slopes. Note the volume of traffic.

EXAMINING THE VEHICLE(S)

Document the make, color, tag number, V.I.N. number, and style of each vehicle. Check for and note all damage, new or old. Describe the direction that each vehicle has come to rest and its direction of travel prior to the accident. Look for current State inspection stickers and/or any invoices of recent repairs. List and collect any alcohol or drugs in or around each vehicle. Check for seat belt use. Note lights and light switches, gear position, and the condition of the tires. Look at the speedometer and note mileage and anything unusual.

IMPOUNDING THE VEHICLE(S)

Each vehicle involved in a motor vehicle fatality shall be impounded at the USPP Headquarters Impound Lot. The vehicles should not be released if (1) there is a need for a formal inspection, (2) additional photographs are needed, (3) the prosecutor wishes them held for trial purposes, (4) forensic tests need to be conducted, or (5) a search of the vehicle is indicated or there is any other logical reason to hold said vehicles.

INVOLVED PERSONS

Document the seating position of each individual in each vehicle. Identify any witnesses and record their tag number. Question witnesses about the accident. It may be necessary to encapsulate their observations and obtain a formal statement at a later time. List any and all injuries to everyone involved.

NOTIFICATION (N.T.S.B.)

The National Transportation Safety Board shall be notified for (1) any school bus fatality, (2) any motor coach fatality, or (3) any bridge collapse.

VEHICULAR SUICIDE

Be alert to the fact that some motor vehicle accidents are used to disguise the intentional taking of one's own life. In cases where this is a possibility, a thorough background investigation of the victim shall be completed.

ACCIDENT RECONSTRUCTION

To lessen the burden to the motoring public, the use of accident reconstruction personnel should be cautiously evaluated. Accident reconstruction, however, will be of benefit if (1) there is a possibility of a tort claim against the United States Government, (2) there is likely to be a criminal prosecution, or (3) if there is an unexplainable or unusual accident.

EVIDENCE COLLECTION

In alcohol or drug-related motor vehicle fatalities, it shall be the responsibility of the patrol officer handling the accident to obtain blood samples from appropriate parties in accordance with force policy. Evidence discovered that needs forensic processing shall be recovered by CIB/ID personnel.

CRIMINAL OR TRAFFIC CHARGES

No charges of any kind shall be placed in motor vehicle fatality cases until the incident has been discussed with the prosecutors office and he/she authorizes charges.

MOTOR VEHICLE FATALITIES IN THE DISTRICT OF COLUMBIA

If a motor vehicle fatality occurs in the District of Columbia, a copy of all reports shall be faxed or delivered to the Hit and Run Section of the Metropolitan Police Department. In addition, a copy of all reports shall be faxed or delivered to the Office of the Medical Examiner for the District of Columbia. The Medical Examiners morgue wagon shall be notified for body removal services.

ACCIDENTAL/INDUSTRIAL DEATHS

In addition to the procedures in the "All Death Investigations" section, the following are additional guidelines for Accidental or Industrial Deaths.

NOTIFICATION TO O.S.H.A

The criteria for notifying the Occupational Safety and Health Administration is (1) any work-related fatality or (2) any work-related accident that hospitalizes 3 or more persons.

CAUSATIVE FACTOR

The equipment or item causing the death shall be thoroughly examined and photographed. Under certain conditions, the item(s) responsible for the death shall be seized or impounded for additional testing. The seizure or impound shall be coordinated with OSHA personnel. Others who have used the item/equipment shall be interviewed about previous equipment failure.

United States Park Police

7/21/93: Bernard Nussbaum

After negotiations between the White House Counsel's Office and the Department of Justice were completed at approximately 1700 hours on 7/21/93, S/A Condon, S/A Salter, Captain Hume, and Detective Markland responded to the West Wing and spoke with Mr. Nussbaum to make arrangements for interviews and a search of Mr. Foster's office on 7/22/93. Mr. Nussbaum is Chief Counsel to the President. S/A Salter and Det. Markland obtained the following information from Mr. Nussbaum as a result of that meeting: (7A)

-Mr. Nussbaum had determined that Mr. Foster had left his office after lunch at 1310 hours on 7/20/93. Mr. Foster had not exhibited any unusual behavior on that day. Mr. Nussbaum tried to page Mr. Foster at approximately 1830 hours. After waiting a brief period of time without receiving a response, Mr. Nussbaum left and proceeded to his domicile, arriving at approximately 1900 hours.

-On 7/20/93 after Vincent Foster's death became known to him, Mr. Nussbaum responded back to the White House where he went through Mr. Foster's office with Patsy Thomassen and Maggie Williams. Mr. Foster stated that they conducted a brief, quick search to see if Mr. Foster may have left a suicide note on his desk. This search lasted from 2200 to 2400 hours. Mr. Nussbaum stated that no documents were removed from the office. (7A

-Mr. Nussbaum stated that he learned that from about 0700-0715 hours one of the secretaries had entered Mr. Foster's office and "piled papers" on his desk top "to make it neat".

-At approximately 0900 hours Mr. Nussbaum again entered the office to look around.

-It was determined that the cleaning lady had emptied Mr. Foster's trash. The trash was retrieved and returned to the office.

-Mr. Nussbaum requested that the U.S.S.S. secure the office and the room was posted at approximately 1015 hours.

Investigation continues.

PAGE 1 OF 1 PAGES

29

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, JULY 25, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. I want to thank our panel and apologize for the inconvenience of having you come back and, Mr. Watkins, you in particular, for having to fly back from California. At this point, before we start, I'm going to ask that you stand for the purposes of being sworn in.

Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, before the panel begins, I'd like to clarify one thing on the schedule. On Thursday, at the time when you wanted to swear in this panel and proceed with the questioning, I indicated that the Members had all relied on the representation that we would break at 1 p.m. last week. You honored that and we appreciate that. But it's now my understanding, and we so informed our people, that that limitation no longer applies, and that it's our intention to do two of our panels each day this week and maybe even intensify the schedule in the following week in order to move this matter to a completion before the recess.

So our people have at least been told that we would do this panel and I think there's another one. We'll go as long today as is necessary in order to complete that and repeat that process on tomorrow and the next day. Am I correct on that?

The CHAIRMAN. It is my intent to spend whatever time necessary to move these proceedings along, and if that means additional hours, why, then, there will be additional hours. Hopefully, I won't have to add additional days. But, if need be, if I see that we have to do that, because I really do want to complete that aspect that

has been assigned to us and that has really been out there for close to a year, I will.

We just have not been able, due to circumstances beyond our control, to undertake this, but now that we have, I am insistent that we complete this before we go home. There is a question, would we go beyond the schedule. It is not my intent to keep us here. I think we can do this.

I also would say if we have some cooperation, because sometimes we think we have to replow the same areas over and over to make our points, if we can attempt, all of us, to withhold that question that may not be necessary, we can save time. We want all the facts. We want to be thorough and comprehensive, but I think we have to be mindful that this is a very ambitious schedule. It's a very thorough one, a very thoughtful one. So it will be my intent to get as much work done as we possibly can during this period of time.

With that, Mr. Chertoff—oh, excuse me. The witnesses have opening statements?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. Mr. Gearan, do you have an opening statement?

Mr. GEARAN. Mr. Chairman, in deference to your time, I would just request that it be submitted for the record.

The CHAIRMAN. Let me say this: If there's anything important, I don't want time to be a situation where we preclude any of the people who appear before us. You're going to have an opportunity to say anything that you think is important, so I'll take your statement as if read into the record in its entirety, but if there's any point you wish to make, please do so.

SWORN TESTIMONY OF MARK D. GEARAN
ASSISTANT TO THE PRESIDENT AND WHITE HOUSE DIRECTOR OF COMMUNICATIONS

Mr. GEARAN. I appreciate that, Mr. Chairman. I will just summarize. To introduce myself, I'm Mark Gearan, I'm Assistant to the President and since June 1993, I've served as Director of Communications at the White House. During the period that you're looking at for these hearings, I answered questions to members of the press. It's my intent today to continue, to the best of my ability, to provide information to you and to Members of the Committee.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Gearan.

Ms. Mathews.

SWORN TESTIMONY OF SYLVIA M. MATHEWS
FORMER SPECIAL ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY

Ms. MATHEWS. Very briefly, Mr. Chairman and Members of the Committee, my name is Sylvia Mathews. When Vincent Foster died on July 20, 1993, I was working at the White House as the Special Assistant to the President for Economic Policy. I am here at the Committee's request and would be pleased to answer any questions the Committee has about my limited involvement in the matters that evening.

Thank you.

The CHAIRMAN. Thank you, Ms. Mathews.
Mr. Watkins.

SWORN TESTIMONY OF W. DAVID WATKINS FORMER ASSISTANT TO THE PRESIDENT FOR MANAGEMENT AND ADMINISTRATION

Mr. WATKINS. Chairman D'Amato, Senator Sarbanes and Members of the Special Senate Committee, my name is David Watkins. From January 1993 until June 1994, I served the Administration as Assistant to the President for Management and Administration. Subsequently, I returned to private life and currently live and work in Southern California.

Despite obligations associated with my work, I have devoted several days over the past 3 weeks to assisting the Committee by voluntarily traveling to DC from California on three occasions to appear, first for a deposition, and today as a witness at this hearing into certain issues attendant to events subsequent to the death of my friend Vincent Foster.

I knew Vince Foster from childhood forward. His death came as quite a shock to me and my wife. After learning of his suicide, I volunteered to accompany the U.S. Park Police in connection with the notification of the Foster family of their tragic loss. My wife and I were present at the Foster home when that notification occurred and for an extended period thereafter, during which time we sought to provide whatever comfort and assistance we could to Mrs. Foster and other relatives and friends who were present.

It was an intensely emotional time and many, many people who knew Vince came by or called to grieve and to grapple futilely with an overwhelming sense of disbelief and a related need to comprehend. Although it has been difficult reliving the events of those sad hours of 2 years ago, I appear willingly to shed whatever light I can on the matters of interest to this Committee.

The CHAIRMAN. Thank you, Mr. Watkins.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Mr. Chairman, I had a question I wanted to ask before we got into the witnesses, if I may.

The CHAIRMAN. Yes, Senator.

Senator FAIRCLOTH. Given the revelations over the weekend concerning the possible involvement of Hillary Clinton in denying the Park Police access to Mr. Foster's office and whether or not she may have instructed Susan Thomases to tell Bernie Nussbaum to keep investigators out of Foster's office, I would like to ask the Chairman and the Ranking Member if they plan to call Mrs. Clinton to testify before this Committee?

The CHAIRMAN. Senator, that question has been raised to me, and I will repeat what I have indicated. Unless there is clear and convincing fact and reasons that necessitate—I say necessitate—the First Lady's appearance, I certainly have no intention of having her called before this Committee. That is my feeling. There would have to be very, very, very strong evidence and facts that have been established, very, very clearly. Otherwise, there will be no appearance before this Committee that this Committee will ask of the First Lady.

Senator FAIRCLOTH. I think she should testify, and I'd like to urge you and the Ranking Member to consider calling her, but I'll abide by that decision now.

Senator SARBANES. Mr. Chairman, could I just make this observation? I'm very concerned about these leaks that have been taking place. Now, we take depositions in advance of bringing witnesses in. We receive documents. When one examines those documents and examines the depositions, there's, on occasion, a conflict in the recollection of people that are involved. One of the purposes in bringing people here for these hearings is to probe into those differences in recollections.

Now, I observed at the outset that it's not surprising that there should be differences in recollections.

The CHAIRMAN. Certainly.

Senator SARBANES. But this selective leaking of material presents a one-sided view of a lot of these situations. Often, in fact, what is leaked is distorted, it's not even factually accurate, let alone even if it were factually accurate, there's a conflict on the part of others. I think we need an opportunity for these hearings to develop in an orderly fashion before the Committee in public, just as we're about to do with this panel, and that we need some additional effort with respect to this leaking that's taking place.

Obviously, somehow, there's a selective releasing of material upon which then media reports are based. I think that this undermines the value of these hearings when this takes place. All of these matters are going to be discussed and discussed fully and openly in these very public sessions, and I think that we need to pay some attention to this situation that's developed.

We had a bit of it in the beginning, but it seems now to have intensified. In fact, I think it's provoking, perhaps even the request we heard this morning, when we haven't even heard from people with those differing recollections.

The CHAIRMAN. Let me, first of all, say that I am distressed and share the Senator's concern that information is being selectively put out. That information can be terribly damaging to people and to their reputations. More importantly, the information may not be accurate because if you give a small snippet, that snippet may not be true when it is not in the context of how it took place or when people cannot explain why it is or how it is and give reasons and answers as to why they may have undertaken a particular action. When it is put in the proper context and can be explained, then most reasonable people would say we understand that.

That is the purpose, as you, Senator Sarbanes, have indicated, of these hearings. I can only say this: To the best of our ability, we will certainly see what we can do. And, by the way, I don't mean to diminish the seriousness of what you say because it is discouraging. It is discouraging when these selective releases of information come from wherever, and there has been a good deal of that, more than most, I have to admit, more than most instances, given the nature of the hearings, given the length and the time.

I would say to the media, though, they do a great disservice to themselves by putting great reliance on information that is given out in a selective way to any and all. By the way, we understand that the media is going to use whatever information they have

from whatever sources. To any and all who are involved in this process, you are just undermining the entire effort that we are engaged in, and it's long and it's arduous, et cetera, by doing that, and I say that goes for all, whether they be on the legislative side or whether they come from the administrative side, it should not be engaged in.

So I share your distress, and I think we have to work in attempting to instill in those who work with us and for us to understand that it can do a great deal of harm to people and their reputations if that continues.

Senator SARBANES. If Senator Simon would yield to me for just a second.

Senator SIMON. I'll be pleased to yield.

Senator SARBANES. Let me just give a very clear example of what I'm talking about. There was a story over the weekend of an E-mail message by Margolis. Now, the heading on that document that we had was, "Vince Foster: Moot Court Media Question." So what he was setting out are the most bizarre questions you could expect the media to ask.

By taking the heading off, it was made to appear that this represented his own view. In other words, instead of setting out what might be asked, he was, in effect, setting out his own view of the situation, and that gives a completely distorted view of the situation.

The CHAIRMAN. Senator, once again, though, and this is not to minimize your concern, the fact of the matter is if we ever have to respond to all of the stories that are in the media, we would not be able to do our job. This is a free society. There is this tendency to sometimes be somewhat sensational with bits and pieces of information that are gathered and gleaned from those who have their job to do, so I think we have to keep it in balance.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes. I simply want to join in with the comments of both Senator Sarbanes and you, Mr. Chairman, and I particularly appreciate your response to Senator Faircloth. It's a very legitimate question he has asked. But I think we have to recognize that there are a great many people, including many people in the U.S. Senate, who think the sole purpose of this whole thing is just political muckraking. I think we have to conduct ourselves in such a way to make clear that is not the case.

In terms of Mrs. Clinton, I've read a great many depositions now. I've seen nothing to indicate that she has done anything improper. I think unless that picture is changed, what the Chairman said is the direction we ought to be going and I appreciate that, Mr. Chairman.

The CHAIRMAN. I thank the Senator.

I'm going to now turn to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. Mr. Watkins, welcome back East. Actually, where are you working now?

Mr. WATKINS. I work in Carlsbad, California.

Mr. CHERTOFF. Doing what?

Mr. WATKINS. I work for Callaway Golf Company.

Senator SIMON. Pull the mike a little closer.

Mr. WATKINS. Callaway Golf Company.

Mr. CHERTOFF. When you were Assistant to the President in 1993, what were your job duties?

Mr. WATKINS. I was an Assistant to the President for Management and Administration. I was providing personnel, supervising the personnel as Office of the White House and providing services to the 14 agencies of the Executive Office of the President.

Mr. CHERTOFF. Were part of your responsibilities supervision of security issues at the White House?

Mr. WATKINS. No, no, sir.

Mr. CHERTOFF. To whom did the Security Office—I don't mean the Secret Service, but the Security Office——

Mr. WATKINS. The Counsel's Office.

Mr. CHERTOFF. To the Counsel's Office?

Mr. WATKINS. Yes.

Mr. CHERTOFF. That was Mr. Nussbaum?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. How long have you known the Clintons?

Mr. WATKINS. I have known President Clinton since he was 2 years old, knew of him at 2 years old. I'm 5 years older and 7-year-olds don't mess with 2-year-olds very much, but I knew who he was. My parents were friends and so I've known him since he was 2. I've known Mrs. Clinton since the mid-1970's.

Mr. CHERTOFF. Is it fair to say you've been friendly with the Clintons since then going forward to the present?

Mr. WATKINS. Yes, sir.

Mr. CHERTOFF. Do you know Patsy Thomasson?

Mr. WATKINS. I do.

Mr. CHERTOFF. When did you first meet her?

Mr. WATKINS. I probably met Patsy Thomasson sometime in the mid- to late 1980's, but really didn't know her well.

Mr. CHERTOFF. Did there come a time when you got to know her better?

Mr. WATKINS. Certainly. Not prior to coming to Washington, though.

Mr. CHERTOFF. She actually worked for you in the White House; right?

Mr. WATKINS. That is correct.

Mr. CHERTOFF. In 1993, what was her position at the White House?

Mr. WATKINS. She was the Director of the Office of Administration.

Mr. CHERTOFF. How did she get hired for that job?

Mr. WATKINS. She was hired by me.

Mr. CHERTOFF. Why did you hire her?

Mr. WATKINS. At the recommendation of some people that I knew from Arkansas.

Mr. CHERTOFF. Who were those people?

Mr. WATKINS. One was the Chairman of the Democratic Party, Mr. George Jernigan. She was at that time Executive Director of the State Party of Arkansas.

Mr. CHERTOFF. Did anybody else recommend her to you for a job?

Mr. WATKINS. I don't recall specific individuals, no, sir.

Mr. CHERTOFF. Nobody else you can remember?

Mr. WATKINS. I think Judge Richard Arnold made a phone call to me about her, just saying that he knew her and knew she was someone that was quite professional and very good.

Mr. CHERTOFF. Anybody else?

Mr. WATKINS. I don't recall anyone else.

Mr. CHERTOFF. Now, let me direct your attention to July 20, 1993. Did there come a time in the evening of that day that you learned that Vincent Foster's body had been discovered?

Mr. WATKINS. Yes.

Mr. CHERTOFF. How did you learn that?

Mr. WATKINS. I was beeped and I made a phone call to the number that beeped me, and I was informed by the Secret Service that Vincent Foster had been found dead.

Mr. CHERTOFF. Did you call anybody after that?

Mr. WATKINS. Yes, I did.

Mr. CHERTOFF. Who did you call?

Mr. WATKINS. I believe I called Bill Burton at the Chief of Staff's Office and told him to notify Mack McLarty.

Mr. CHERTOFF. That was the Chief of Staff at that time?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Did you call anybody else?

Mr. WATKINS. I think I made—I made a call to the Park Police that evening about asking to go to notify the family.

Mr. CHERTOFF. You wanted them to come get you so you could go notify the family?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Why did you call the Park Police for that?

Mr. WATKINS. Because I was told by the Secret Service when they called me—they gave me a number for the Park Police and I knew that that's who was doing it.

Mr. CHERTOFF. You knew the Park Police were investigating the matter?

Mr. WATKINS. I knew the Park Police were the ones that had found the body, yes, or had been involved at Fort Marcy.

Mr. CHERTOFF. They were involved in examining the body and investigating the cause of death?

Mr. WATKINS. That's my understanding, yes.

Mr. CHERTOFF. In fact, a couple of Park Policemen came to pick you up; right?

Mr. WATKINS. Yes.

Mr. CHERTOFF. Do you remember their names?

Mr. WATKINS. Mr. Rolla and Ms. Braun.

Mr. CHERTOFF. They drove you over to the Foster house?

Mr. WATKINS. They did.

Mr. CHERTOFF. They accompanied you into the house?

Mr. WATKINS. I accompanied them.

Mr. CHERTOFF. On this trip, did you have a conversation with them about what they had found?

Mr. WATKINS. We had a limited conversation on the trip over from my house to the Fosters.

Mr. CHERTOFF. Did you discuss with them whether they had found any note or indication of motivation for suicide at the site?

Mr. WATKINS. Mr. Chertoff, I don't recall if I had direct conversation with them about it or if I heard it over the radio or in conversations that they were having, but I do recall that they had indicated there was not a note at the scene.

Mr. CHERTOFF. Did they discuss that fact with you?

Mr. WATKINS. As I said, I don't recall if Detective Rolla and I had an actual conversation about it or if I overheard it, but I did hear in the car that there was not a note found at the——

Mr. CHERTOFF. Now, when you got to the house, I take it there were a number of other people there?

Mr. WATKINS. Yes.

Mr. CHERTOFF. Members of the family? Of the Foster family?

Mr. WATKINS. The sisters of Vince Foster arrived almost simultaneously to our arrival at the house, yes.

Mr. CHERTOFF. Did you have a cellular phone with you?

Mr. WATKINS. I did.

Mr. CHERTOFF. Were you making telephone calls that evening?

Mr. WATKINS. I did make some calls, yes.

Mr. CHERTOFF. Did there come a point that evening that you decided to have somebody go into the White House to look for a note?

Mr. WATKINS. Yes, sir.

Mr. CHERTOFF. How did you come to that decision?

Mr. WATKINS. There was no note at the scene. We knew that.

Mr. CHERTOFF. When you say "we," you mean you learned it from the Park Police?

Mr. WATKINS. I learned it from the Park Police, yes, and there was some general discussion at the house. It was a feeling of just why. The big question was why did Vince do this, and they looked for a note at the house.

Mr. CHERTOFF. Who looked for a note at the house?

Mr. WATKINS. Ms. Foster, Lisa. I learned that there was not a note at the house. So, in general discussion, again, to try to answer the why was there not a note? Why? Why did Vince do this? Did he leave a note? Perhaps he left it at his office.

Mr. CHERTOFF. Who participated in this general discussion?

Mr. WATKINS. I recall specifically Mr. McLarty, and I talked with Lisa Foster about it also.

Mr. CHERTOFF. Did you talk to the Park Police about it?

Mr. WATKINS. I did not.

Mr. CHERTOFF. Did you talk to the Park Police about whether they had told members of the family that no note had been discovered at the scene of the death?

Mr. WATKINS. I did not talk to them about it, no, sir.

Mr. CHERTOFF. With whom did you discuss your decision to have somebody go into Mr. Foster's office to look for a note?

Mr. WATKINS. As I recall, I talked with Mack McLarty about it, and I also mentioned it to Lisa Foster, that I would ask someone to look for a note.

Mr. CHERTOFF. They both agreed it was a good idea?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Did you talk to the Park Police about it?

Mr. WATKINS. I did not.

Mr. CHERTOFF. Were the Park Police there at the time you made the decision to make the call?

Mr. WATKINS. I'm not sure. They may very well have been. There did not seem to be a lot of interest by the Park Police at the time in the office of Vince Foster, and they had not asked the family—they had not made a search for the note. They just asked the family if there was a note.

Mr. CHERTOFF. I see. So you were present when the Park Police indicated to the family they were interested in learning whether there was a note at the home?

Mr. WATKINS. No, I didn't say that. I said, from my understanding, they did not make a search of the house for the note, but they asked the family to look for it, was there a note, had they found a note.

Mr. CHERTOFF. You were aware of the fact that the Park Police had asked the family if there was a note in the house?

Mr. WATKINS. Yes.

Mr. CHERTOFF. You were aware of the fact, from your ride over, that the Park Police had also looked for a note at the scene?

Mr. WATKINS. Yes.

Mr. CHERTOFF. But you did not discuss with them your thought that someone ought to look in the office for the note; is that correct?

Mr. WATKINS. I did not.

Mr. CHERTOFF. Now, when you decided that someone should look in the office for the note, did you call the White House?

Mr. WATKINS. No. I called—I think I originally beeped Patsy Thomasson to inform her of Vince's death. By the time she called me back, we had had this discussion about the note, and I asked her to go look for a note.

Mr. CHERTOFF. At the time you spoke to her on the telephone when she called you, did she tell you where she was?

Mr. WATKINS. I don't recall the name, but I think she was at a restaurant.

Mr. CHERTOFF. You knew she was not at the White House?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Did you think there were people at the White House that evening, that night?

Mr. WATKINS. There are always people at the White House, yes.

Mr. CHERTOFF. Had you spoken to Mr. Gearan before this point in time?

Mr. WATKINS. Mr. Who?

Mr. CHERTOFF. Gearan.

Mr. WATKINS. I had spoken to—I believe I had spoken to Mr. Gearan before going to the Foster home, yes.

Mr. CHERTOFF. So you knew he was at the White House; right?

Mr. WATKINS. That was earlier in the evening, yes.

Mr. CHERTOFF. You knew there were Secret Service personnel at the White House?

Mr. WATKINS. Yes.

Mr. CHERTOFF. Did you call anybody at the White House and ask them to go into Mr. Foster's office?

Mr. WATKINS. No, I did not.

Mr. CHERTOFF. Did you call Mr. Nussbaum or anybody from the White House Counsel's Office and ask them to go into the office?

Mr. WATKINS. No.

Mr. CHERTOFF. The only person you asked to go in was Patsy Thomasson?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Who you knew was not at the White House, but at a restaurant?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Did you discuss with Patsy Thomasson how she was going to get into Mr. Foster's office?

Mr. WATKINS. I did not.

Mr. CHERTOFF. You knew she was not someone who regularly occupied the office; right?

Mr. WATKINS. I knew that she was not an occupant of the office, that's correct.

Mr. CHERTOFF. She has a different office?

Mr. WATKINS. That's correct.

Mr. CHERTOFF. Does she have a key to all the offices?

Mr. WATKINS. No, sir.

Mr. CHERTOFF. Do you know whether she has the authority to enter the White House Counsel's Office at will?

Mr. WATKINS. I don't know if she has the authority, but she was someone that was engaged in taking care of the offices, moving furniture, changing personnel from office to office, so she had a general access to all the offices in the White House.

Mr. CHERTOFF. Ms. Mathews, if I can turn to you for a moment, do you remember where you were that evening when you learned about what had happened to Mr. Foster?

Ms. MATHEWS. I was in the residence of the White House.

Mr. CHERTOFF. Was that for a taping of a Larry King interview?

Ms. MATHEWS. Yes, sir.

Mr. CHERTOFF. Where did you go after you had learned that Mr. Foster had been discovered?

Ms. MATHEWS. I went to the—I'm sorry, had been discovered?

Mr. CHERTOFF. Yes.

Ms. MATHEWS. I went to the secretarial suite of the Chief of Staff's Office.

Mr. CHERTOFF. Why did you do that?

Ms. MATHEWS. To answer phones.

Mr. CHERTOFF. Was that a decision you made?

Ms. MATHEWS. Yes, sir, it was.

Mr. CHERTOFF. Do you remember approximately when you left the residence to go over to the Chief of Staff's suite?

Ms. MATHEWS. I don't remember the exact time. The majority—I'm not sure if the Larry King show had ended, but I know I had watched the majority of it.

Mr. CHERTOFF. You left before it was actually concluded?

Ms. MATHEWS. I don't remember whether it was actually concluded or not.

Mr. CHERTOFF. How long did you spend in the Chief of Staff's suite?

Ms. MATHEWS. For the entire evening—I was there most of the evening until I left that night.

Mr. CHERTOFF. Did you stay there continuously or was there a point when you went back to the residence?

Ms. MATHEWS. There was a point at which I went back to the residence.

Mr. CHERTOFF. Why did you do that?

Ms. MATHEWS. In answering the phones, there was a message that came in that I thought should be delivered over to the residence.

Mr. CHERTOFF. Now, during the course of the time you were at the Chief of Staff's Office, did you have occasion to go to your own office?

Ms. MATHEWS. Yes. At one point in the evening—I actually don't have an office, and did not at that time. I have a space outside of the person I worked for's office and I did go there, yes, sir.

Mr. CHERTOFF. Where is that located?

Ms. MATHEWS. It is located on the second floor of the West Wing.

Mr. CHERTOFF. Do you remember approximately when you went up to your own space?

Ms. MATHEWS. I'm sorry, I don't remember specific times. I remember sequences, but not specific times.

Mr. CHERTOFF. Do you remember if it was sometime before 10:45 p.m.?

Ms. MATHEWS. I think that it was sometime between 10 and 10:45, yes, sir.

Mr. CHERTOFF. In that three-quarters of an hour period?

Ms. MATHEWS. In that range, yes.

Mr. CHERTOFF. Do you remember, as you walked up to your space, looking into the White House Counsel's Office?

Ms. MATHEWS. The suite is all that you can see. It is a suite, and the secretarial office is—as I walked by, I saw the secretarial office.

Mr. CHERTOFF. Was it open or closed?

Ms. MATHEWS. It was open.

Mr. CHERTOFF. Was anybody in it?

Ms. MATHEWS. I didn't hear or see anyone.

Mr. CHERTOFF. Were the lights on or off?

Ms. MATHEWS. I don't recall whether the lights were on or off.

Mr. CHERTOFF. Now, how long did you spend up in your own work area on the second floor?

Ms. MATHEWS. Under 5 minutes.

Mr. CHERTOFF. Then did you return to the Chief of Staff's Office?

Ms. MATHEWS. The secretarial suite, yes, sir.

Mr. CHERTOFF. Again, that would be the secretarial area in the middle of the suite off of which the Chief of Staff's personal office is located?

Ms. MATHEWS. That's correct, the area between Mr. McLarty's office and, at that time, Mr. Roy Neel's office.

Mr. CHERTOFF. You sat at one of the desks?

Ms. MATHEWS. Yes.

Mr. CHERTOFF. Were there other people there at this time?

Ms. MATHEWS. When I returned from coming from my area?

Mr. CHERTOFF. Right.

Ms. MATHEWS. No.

Mr. CHERTOFF. At any point during the period of time when you were in the Chief of Staff's suite, were there other people in the suite?

Ms. MATHEWS. In the evening, during the evening?

Mr. CHERTOFF. Yes.

Ms. MATHEWS. Yes, sir.

Mr. CHERTOFF. Do you remember approximately when that was?

Ms. MATHEWS. I don't remember the time, but people came in throughout the evening.

Mr. CHERTOFF. Was Mr. Burton there?

Ms. MATHEWS. Yes, sir.

Mr. CHERTOFF. Can you tell us what Mr. Burton's position was at that time in the White House?

Ms. MATHEWS. I'm not certain of the specific title, but it was Chief of Staff to the Chief of Staff.

Mr. CHERTOFF. So the Chief of Staff's suite was an area that he generally did his work in?

Ms. MATHEWS. I'm not exactly sure where Bill Burton's desk was, but he was in that area when he would do things.

Mr. CHERTOFF. Were you present for telephone conversations in which you heard Mr. Burton's part of the conversation?

Ms. MATHEWS. Only one that I recall.

Mr. CHERTOFF. Do you remember who the caller was from anything that you heard Mr. Burton say during the course of the conversation?

Ms. MATHEWS. I recall that the call was from the Park Police, but I'm not certain whether that's because I answered the phone call or because I understood it from the conversation.

Mr. CHERTOFF. Did you hear Mr. Burton's side of the conversation?

Ms. MATHEWS. Yes, sir.

Mr. CHERTOFF. Were you there after Mr. Burton had hung up and had conversation with other people?

Ms. MATHEWS. Yes.

Mr. CHERTOFF. You have a recollection of that conversation?

Ms. MATHEWS. I do.

Mr. CHERTOFF. Can you tell us generally what you recall of that conversation?

Ms. MATHEWS. I recall two things: One, that Bill Burton suggested that the office of Vincent Foster be locked; and two, we had a discussion about the trash.

Mr. CHERTOFF. Let me just focus on the first part of that. When you say Mr. Burton suggested that Mr. Foster's office be locked, was that a subject he discussed with the Park Policeman on the telephone?

Ms. MATHEWS. I don't recall whether that was discussed.

Mr. CHERTOFF. Do you remember that, after the telephone call was concluded, he made that statement?

Ms. MATHEWS. It was around the same time temporally, yes.

Mr. CHERTOFF. Was it your understanding he made that request or suggestion as a consequence of the telephone call?

Ms. MATHEWS. I didn't understand cause and effect there, no.

Mr. CHERTOFF. I think at this point, Mr. Chairman, I would yield the balance of my time back and I think Senator Grams had something.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Mathews, at the time of Mr. Foster's suicide, you were Robert Rubin's aide at the White House?

Ms. MATHEWS. Yes, sir.

Senator FAIRCLOTH. Ms. Mathews, you testified in your deposition that after you learned of Vince Foster's death, you went to check to see if the trash had been taken from Mr. Foster's office. Did you, in fact, locate and preserve the trash bag from Vince Foster's office?

Ms. MATHEWS. The trash and the burn bag are two separate issues and I think it's important to make sure we distinguish between—they're different in time and procedure. I did preserve the trash.

Senator FAIRCLOTH. You were able to see if there was any evidence or any information that might be relevant to Mr. Foster's death in the trash. You preserved the trash that possibly could contain evidence?

Ms. MATHEWS. I preserved the trash.

Senator FAIRCLOTH. In addition to the trash, are there any special bags for classified documents in the White House that are referred to as burn bags?

Ms. MATHEWS. Yes, sir, there are burn bags in the White House.

Senator FAIRCLOTH. Were you able to locate the burn bag from Mr. Foster's office?

Ms. MATHEWS. No, sir, in the sense that the burn bags are emptied on a daily basis. Therefore, the only thing I identified was a commingled bag.

Senator FAIRCLOTH. A commingled bag?

Ms. MATHEWS. Yes, sir.

Senator FAIRCLOTH. Mr. Foster's office didn't have a burn bag in it?

Ms. MATHEWS. I learned that after I had gotten the burn bag, the commingled burn bag.

Senator FAIRCLOTH. In Mr. Foster's office you commingled the trash in the burn bag?

Ms. MATHEWS. There is a process in the White House that occurs on a regular basis every evening where the uniformed division of the Secret Service comes and empties the individual burn bags into one larger bag, and that larger bag is commingled. So that is what I am referring to.

Senator FAIRCLOTH. All right. Now, at the time of the discovery of Mr. Foster's death, had his burn bag been emptied?

Ms. MATHEWS. At the time in the evening—the Secret Service reported that when I went to seek the burn bag, that they had done their round of emptying.

The CHAIRMAN. Can I ask you, just for a moment, about what time was this when you made the inquiries about the garbage and the burn bag?

Ms. MATHEWS. Mr. Chairman, I apologize. I can remember sequences but not time within the evening. Sorry.

The CHAIRMAN. OK.

Senator FAIRCLOTH. You were trying to preserve what you thought was Foster's burn bag?

Ms. MATHEWS. Until I learned that he did not have a burn bag in his office.

Senator FAIRCLOTH. Why couldn't the burn bag have been secured and kept in a safe place for someone with proper clearance to review at a later time instead of destroying it? In other words, did you question Mr. Nussbaum's decision to have the bag destroyed?

Ms. MATHEWS. When he advised me that there was no burn bag in Vincent Foster's office, and there were concerns that it was a commingled bag containing all the information from the West Wing, I implemented what he asked me to do.

Senator FAIRCLOTH. Mr. Nussbaum asked you to destroy it?

Ms. MATHEWS. He said to process it as you normally do.

Senator FAIRCLOTH. In other words, burn it?

Ms. MATHEWS. Yes, sir. I don't know exactly how the Secret Service does it, but——

The CHAIRMAN. Senator, could we ask one question?

Mr. CHERTOFF. I just had a question because of something you just said. Is it correct that the way you learned or the way you came to believe that there was no burn bag in Mr. Foster's personal office was because of what Mr. Nussbaum told you?

Ms. MATHEWS. That's correct.

Mr. CHERTOFF. So you relied upon what Mr. Nussbaum told you in terms of your understanding of whether, in fact, there ever was a burn bag in Mr. Foster's office?

Ms. MATHEWS. Yes, sir.

Mr. CHERTOFF. Thank you.

Senator FAIRCLOTH. Mr. Watkins, you testified earlier that Federal Judge Richard Arnold called you to recommend Patsy Thomasson for a job. Did you discuss the hiring of Patsy Thomasson with either the President or Mrs. Clinton or did you get any recommendations or anything from them in regard to her hiring? This is important.

Mr. WATKINS. As I recall, I mentioned it to Bruce Lindsey.

Senator FAIRCLOTH. You mentioned it to whom?

Mr. WATKINS. To Bruce Lindsey, that I was considering hiring Patsy Thomasson to be my Deputy. Bruce said let me think about it, and then he got back with me and said he thought it was fine to offer her the position.

Senator FAIRCLOTH. Does that mean that he discussed it with the President and Mrs. Clinton?

Mr. WATKINS. He may have.

Senator FAIRCLOTH. Mr. Watkins, you were a lifelong friend of the President, as you testified. You served as political advisor to Mr. Clinton since 1981; is that right?

Mr. WATKINS. No, sir. I served since—yes, 1981. Before the 1982 election, I was involved in all his gubernatorial campaigns as a media person, media advisor.

Senator FAIRCLOTH. You were Deputy Campaign Manager in his campaign for President?

Mr. WATKINS. Yes, sir.

Senator FAIRCLOTH. Did you serve as the Assistant to the President for Management and Administration in the White House up until May 1994?

Mr. WATKINS. Until June 1994——

Senator FAIRCLOTH. June 1994?

Mr. WATKINS. —Senator.

Senator FAIRCLOTH. The purpose of this question is not to be of embarrassment, but to establish a later fact. You did resign your position after the overly publicized helicopter incident?

Mr. WATKINS. Overly publicized is the key word there, Senator. Yes, sir, I did.

Senator FAIRCLOTH. I figured that it was. All right. Even though you left the White House because of this incident, didn't you go to the Clinton/Gore campaign payroll, go to work with the Clinton/Gore campaign?

Mr. WATKINS. Subsequent to that, yes, sir, some 2 months after that, I believe. Let me clarify that, though, Senator. Not on the campaign payroll—I mean, not working directly for the campaign. I was a consultant to them on the FEC audits.

Senator FAIRCLOTH. But you worked for the Clinton/Gore campaign group?

Mr. WATKINS. Yes, sir.

Senator FAIRCLOTH. You stayed on the payroll.

Mr. Watkins, Cheryl Braun of the Park Police has testified she clearly remembers directing you to seal Mr. Foster's office shortly before her departure from the Foster home the evening of July 20, 1993. Do you recall her asking you to seal Mr. Foster's office?

Mr. WATKINS. Senator, just like Detective Rolla, her partner, I do not recall her making such a request.

Senator FAIRCLOTH. Did you ever discuss with the President the search of——

The CHAIRMAN. Mr. Watkins, let me—and this is the first time I said it. Detective Rolla did not say that. He said he did not hear her make that request, so I think we don't want to characterize it.

Mr. WATKINS. All right, Mr. Chairman.

Senator FAIRCLOTH. Did you ever discuss with the President the search of Mr. Foster's office or the Park Police's instructions to seal? Have you ever discussed this with the President?

Mr. WATKINS. I did not.

Senator FAIRCLOTH. You never have?

Mr. WATKINS. No, sir.

Senator FAIRCLOTH. When Officers Braun and Rolla were at the Foster home that evening, did you at any time tell them that you had instructed someone who worked for you, Patsy Thomasson, to search Vince Foster's office at the White House? In other words, did you tell the Park Police that you had already gotten on with the search?

Mr. WATKINS. I did not.

Senator FAIRCLOTH. So, when they told you to seal it, you had already—the seal was already gone. You called Patsy Thomasson to go search it?

Mr. WATKINS. As I indicated earlier, Senator, I do not recall Investigator Braun asking me to seal it.

Senator FAIRCLOTH. But if they had asked, it was too late. You already told Patsy Thomasson—reached her at a restaurant and told her to go search it?

Mr. WATKINS. I cannot recall. Assuming the time—by the time I talked with Ms. Thomasson, if Officer Braun and Officer Rolla were still at the residence—I don't recall.

Senator FAIRCLOTH. At the time you told this lady to go search this office under these very stringent conditions that existed, were you aware that she had not received clearance from the FBI?

Mr. WATKINS. I do not know if—I do not recall knowing at that time that she did not have her security clearance, no, sir.

Senator FAIRCLOTH. You didn't know she had——

Mr. WATKINS. I don't have any confidence that I knew at that time. There were several—because of the process of getting security clearances and the fact that there were many at the White House in mid-summer 1993 that had not completed their security process, but I'm not—I do not know—I do not recall whether I knew at the time that Ms. Thomasson was one of those.

Senator FAIRCLOTH. There might have been a number of people who didn't have their clearance, but Ms. Thomasson was not one of a thousand. She was one of two. She was high up in the hierarchy. It looks like it would have gotten to her first and not taken 7 months to clear her unless there was a reason.

Mr. WATKINS. I don't think that's correct, sir.

Senator FAIRCLOTH. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman. Thank you, Senator Sarbanes.

Good morning, panel.

Mr. WATKINS. Good morning.

Mr. BEN-VENISTE. I'd like to start first with Mr. Watkins. Could you describe briefly the scene at the Foster home starting from when you arrived that evening of July 20, 1993?

Mr. WATKINS. Mr. Ben-Veniste, it was a scene of sadness, extreme grief. People were—everyone was wondering why, why would Vince have done this, a lot of emotion, the family was distraught. Everyone that knew Vince was distraught.

Mr. BEN-VENISTE. Can you describe the sequence, to the best of your ability, of who came to the home that evening?

Mr. WATKINS. When I arrived with the officers from the Park Police, Ms. Braun and Mr. Rolla, my wife came in her car right behind us and, just as we arrived, Sharon Bowman, a sister of Mr. Foster, Sheila Anthony, another sister, and Webb Hubbell arrived.

Mr. BEN-VENISTE. Then what occurred?

Mr. WATKINS. The officers notified Lisa that Vince had shot himself and there were cries of anguish and everyone was trying to comfort the family and comfort those that were there.

Mr. BEN-VENISTE. Were there children in the home?

Mr. WATKINS. There were. Laura Foster answered the door, his daughter.

Mr. BEN-VENISTE. Then what ensued?

Mr. WATKINS. There were a lot of calls from people. There were people trying to notify their family members—just really people in disbelief and trying to comfort each other. It was a time of—an unbelievably emotional time. Everyone was upset.

Mr. BEN-VENISTE. Did there come a time when President Clinton arrived?

Mr. WATKINS. Yes, sir.

Mr. BEN-VENISTE. Were others in President Clinton's party when he arrived?

Mr. WATKINS. Mr. McLarty came with the President. I know that.

Mr. BEN-VENISTE. Could you describe the Foster home, was it a large dwelling?

Mr. WATKINS. No, it was a very modest home and pretty crowded at that time.

Mr. BEN-VENISTE. At some point, you've indicated the question was repeated why, why did Mr. Foster do this. You learned that no note had been found at the scene of Mr. Foster's suicide at Fort Marcy Park?

Mr. WATKINS. Yes, sir.

Mr. BEN-VENISTE. You learned that no note had been discovered in any obvious place in the home?

Mr. WATKINS. Right.

Mr. BEN-VENISTE. Then you contacted Patsy Thomasson to see whether a note could be located in Mr. Foster's office?

Mr. WATKINS. As I recall, my best recollection, Mr. Ben-Veniste, is that I beeped Patsy to notify her of the death. She was my Deputy. She knew Vince. She was from Arkansas, and I just wanted to notify her. By the time she called me back and had gotten back to me, there had been a general discussion about notes. We knew there had not been one found at the home and I asked her to go look for a note.

Mr. BEN-VENISTE. Basically, she was the first person you spoke to from the outside after this conversation in the home had occurred?

Mr. WATKINS. About the note, yes.

Mr. BEN-VENISTE. On this point of White House clearances, is it your understanding that there were a number of people whose clearances had not been processed in a timely way as of July 1993, 7 months into the Administration?

Mr. WATKINS. Yes, sir.

Mr. BEN-VENISTE. Was Ms. Thomasson one of those?

Mr. WATKINS. She was.

Mr. BEN-VENISTE. Was there any substantive reason why Ms. Thomasson's clearance had not been processed up to that point?

Mr. WATKINS. No.

Mr. BEN-VENISTE. In other words, was there any problem that people were investigating, to the best of your knowledge?

Mr. WATKINS. To the best of my knowledge, no.

Mr. BEN-VENISTE. To the best of your knowledge, was the delay anything other than a delay in processing the paperwork?

Mr. WATKINS. No.

Mr. BEN-VENISTE. Now, let's continue. You're on the phone with Ms. Thomasson, and what did you ask her—what did she say to you and what did you say to her?

Mr. WATKINS. She was shocked also, and I said we were wondering if there might be a note in Vince's office, would you go look for one? That's what I asked her.

Mr. BEN-VENISTE. What did she say?

Mr. WATKINS. She said yes, I will.

Mr. BEN-VENISTE. Did you learn that she had been in a restaurant in Georgetown about 10 minutes from the White House?

Mr. WATKINS. As I said, I don't recall what restaurant or where I—I think she told me she was in a restaurant, yes.

Mr. BEN-VENISTE. Then, at some point later that evening, did Ms. Thomasson report back to you?

Mr. WATKINS. She did.

Mr. BEN-VENISTE. Can you estimate how long it was between the time you first contacted her and the time that she reported back to you that she gave you her report?

Mr. WATKINS. I think 45 minutes to an hour, within an hour.

Mr. BEN-VENISTE. The report was?

Mr. WATKINS. That she had not found a note.

Mr. BEN-VENISTE. Did she indicate anything else that she had seen at the Counsel's Office?

Mr. WATKINS. She reported to me that she ran into Maggie Williams and Bernie Nussbaum there, and they were grief stricken, and they all sat on the sofa and cried.

Mr. BEN-VENISTE. Now, your testimony is that you do not recall Sergeant Braun asking you whether Mr. Foster's office could be locked; is that correct?

Mr. WATKINS. That is correct.

Mr. BEN-VENISTE. I'd like to clarify, if I can, this recurring question of the use of the terms "seal" and "lock." I thought we had established, with Park Police Officers Braun and Rolla, that the request was to see whether the office could be locked. Did you know whether the office had a lock on it?

Mr. WATKINS. Not specifically, but I assumed it had a lock on it because it was the Counsel's Office and the Chief of Staff's Office had a lock. The Counsel's Office had a lock.

Mr. BEN-VENISTE. Now, at some point the next morning there was a formal request from the Park Police with respect to securing that office; is that correct?

Mr. WATKINS. I learned of that later, yes.

Mr. BEN-VENISTE. At some point that morning, a Secret Service guard was posted at the door and later in that day, a lock was physically installed; is that correct?

Mr. WATKINS. Again, I learned of all that later. Once the meeting the next morning was held in my office—there was a meeting held in my office to go through the process of how the investigation was going to be conducted—this was by the Park Police—I went off the radar screen as to any involvement in there because that had been turned over to Mr. Nussbaum. I was involved in making travel arrangements and funeral arrangements for the funeral.

Mr. BEN-VENISTE. Let me ask you, Ms. Mathews, about matters involving your involvement on the evening of July 20, 1993.

Working backward, from the time you left the White House that evening or in the early morning hours of the next day, can you tell us what time you left the White House?

Ms. MATHEWS. Approximately 1:30 in the morning.

Mr. BEN-VENISTE. So you had been at the White House continuously throughout the evening until 1:30 in the morning?

Ms. MATHEWS. Yes, sir.

Mr. BEN-VENISTE. So, in terms of the time sequences here, if you were to work backward from the time that you looked through the trash and later looked for the burn bag material, this was fairly late in the evening; is that correct?

Ms. MATHEWS. I'm sorry. As I've said before, I can do sequencing, but as far as time within the evening, I don't recall.

Mr. BEN-VENISTE. In sequencing, working back from the time you left the White House, can you approximate when it was that you began to look for the trash?

Ms. MATHEWS. Sometime after 10 p.m. to 10:45 would have been the time, because that's the time we've established—that approximately somewhere in that time I went upstairs to gather my papers and my work, sometime after that block of time.

Mr. BEN-VENISTE. You walked down to the Counsel's Office?

Ms. MATHEWS. I'm sorry?

Mr. BEN-VENISTE. Then did you go back down to the Chief of Staff's Office?

Ms. MATHEWS. I went to the Chief of Staff's secretarial suite.

Mr. BEN-VENISTE. At some point, a telephone call came in where you overheard Mr. Burton's side of the conversation?

Ms. MATHEWS. Yes, sir.

Mr. BEN-VENISTE. OK. So now we are how far along in the sequence?

Ms. MATHEWS. That happened after I had gone upstairs to get my work.

Mr. BEN-VENISTE. So we're somewhere in the neighborhood of 11 p.m. or 11:15?

Ms. MATHEWS. It depends on what time I went upstairs, 10 p.m. or 10:45, when that occurred. I'm sorry, I don't remember.

Mr. BEN-VENISTE. We know that the White House Counsel's Office—because we have the electronic records of the opening of that office, when the cleaners came in to remove the trash was at approximately 10:36. So you're operating at the beginning of the sequence at 10:36 when you could have possibly seen—I'm sorry, 10:42 when you could possibly have seen the office open. If you accept that the office was not open, according to the electronic records, until 10:42, your trip upstairs to get your papers could not have occurred before 10:42; is that correct?

Ms. MATHEWS. The door was open when I went upstairs, yes.

Mr. BEN-VENISTE. So you get your papers, you come back downstairs and some time goes by and there's a conversation about whether the office ought to be locked and then you go to look for the trash; correct?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. That's the sequence. Now, again, with respect to the trash, is it correct that no one from the Park Police or any other investigative agency made the suggestion to you or those with you that you ought to go and look for the trash?

Ms. MATHEWS. That's correct. It was not——

Mr. BEN-VENISTE. It was something which had occurred to you and which the people with whom you were talking agreed would be a good idea, let's go and see whether we can preserve evidence; correct?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. So now you go upstairs again, and you talk to the GSA cleaning people; correct?

Ms. MATHEWS. I spoke with the GSA—the cleaning ladies, and I think I did that, though, on the—what's the first floor?

Mr. BEN-VENISTE. On the first floor?

Ms. MATHEWS. It's the basement, the first floor, the second floor, so the first floor.

Mr. BEN-VENISTE. The Counsel's Office is on the second floor?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. You were one floor below?

Ms. MATHEWS. When I first spoke with the cleaning ladies.

Mr. BEN-VENISTE. OK. Now, when you saw them, let me ask you, were they in the presence of a uniformed Secret Service officer?

Ms. MATHEWS. I don't recall seeing one with them.

Mr. BEN-VENISTE. Now, you established in your conversation with them that they had already picked up the trash from the second floor offices?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. They directed you to where they had accumulated the individual trash bags from each wastepaper basket and accumulated them in larger receptacles; correct?

Ms. MATHEWS. Larger trash bags, yes.

Mr. BEN-VENISTE. You were able to go through the larger trash bags to identify Mr. Foster's trash bag?

Ms. MATHEWS. That's correct, I found his smaller trash bag.

Mr. BEN-VENISTE. How did you do that, Ms. Mathews? How did you identify his trash bag?

Ms. MATHEWS. The smaller trash bags were separate, so when I opened the trash bags, I found one that had buck slips, which are stickers that are used to circulate documents, and they had Vincent Foster's name on them. Additionally, I saw other things with his name on it, and assumed that that was his trash.

Mr. BEN-VENISTE. Did you find credit card slips?

Ms. MATHEWS. Yes, sir, I did.

Mr. BEN-VENISTE. So it was quite clear to you that you had identified the trash receptacle that had come from Mr. Foster's office that evening?

Ms. MATHEWS. Yes, sir.

Mr. BEN-VENISTE. Then what did you do with that receptacle?

Ms. MATHEWS. I took it downstairs to the secretarial area of the Chief of Staff's Office. I took the bag downstairs.

Mr. BEN-VENISTE. What did you do with it?

Ms. MATHEWS. I consulted with senior staff who were around and asked should we examine the contents and was told—I don't remember the exact words or who said what—but generally encouraged to go ahead and look through the trash.

Mr. BEN-VENISTE. And you did so. Did you find any suicide note or evidence reflecting Mr. Foster's state of mind?

Ms. MATHEWS. No, sir, I didn't find anything that indicated anything about that.

Mr. BEN-VENISTE. Did you report that fact to anyone?

Ms. MATHEWS. Yes, I did, to those that were there.

Mr. BEN-VENISTE. Whom do you recall advising?

Ms. MATHEWS. At that particular time, I don't recall exactly who was around, senior staff were in and out of that office throughout the evening.

Mr. BEN-VENISTE. What did you do with the receptacle after you had searched through it?

Ms. MATHEWS. I put everything back in the plastic bag with one exception, and that was a creamer that still had cream, so I threw that away, and put everything back in the bag.

Mr. BEN-VENISTE. What did you do with that?

Ms. MATHEWS. At that point, I put it in the office. I was in the suite, the Chief of Staff's suite, and I took it into the office of, at that time, Deputy Chief of Staff Roy Neel's Office.

Mr. BEN-VENISTE. Where did you place it?

Ms. MATHEWS. Inside the office, as you walk in to the right.

Mr. BEN-VENISTE. Did you take any precaution to ensure that the trash not be thrown away again inadvertently?

Ms. MATHEWS. The following morning when I came to work, I placed a call down to the Office of the Chief of Staff to let that office—to let them know what that was that was sitting in Roy Neel, the Deputy Chief of Staff's Office.

Mr. BEN-VENISTE. Do you recall whether you placed some kind of a note on the trash bag?

Ms. MATHEWS. I placed the inventory that I had made on the trash.

Mr. BEN-VENISTE. So it was clear that it was isolated—it had a note on it stuck to it reflecting the inventory, and then you took the additional precaution of phoning to advise the people in that office that they should safeguard this material?

Ms. MATHEWS. Yes, I both taped a note on and called.

Mr. BEN-VENISTE. Now, that evening, why didn't you put the trash bag back in Mr. Foster's office?

Ms. MATHEWS. I'm sorry, I don't know. I didn't think to do that.

Mr. BEN-VENISTE. Because it was locked?

Ms. MATHEWS. I don't know why I didn't take it——

Mr. BEN-VENISTE. You couldn't get in at that point?

Ms. MATHEWS. I'm sorry. At that point, I don't know why I didn't——

Mr. BEN-VENISTE. Did you go back upstairs after you had made the search of the trash and walked past the Counsel's Office?

Ms. MATHEWS. Yes, I did.

Mr. BEN-VENISTE. Were the doors closed?

Ms. MATHEWS. The doors were closed.

Mr. BEN-VENISTE. Did it appear to have been locked?

Ms. MATHEWS. It appeared to have been locked.

Mr. BEN-VENISTE. So the trash was locked out, and so you put it in Mr. Neel's office for safekeeping?

Ms. MATHEWS. As far as the sequence of the timing on which thing, I did put it in Mr. Neel's office.

Mr. BEN-VENISTE. Let's turn to the burn bag material, which is separate from the trash. After you had gone through the steps that you have indicated to safeguard the trash, you thought, what about the burn bag material; is that correct?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. Burn bag material is material of a highly sensitive nature; is that correct?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. Would you explain the uses for burn bags?

Ms. MATHEWS. Various people use them differently. When you're briefed in your security briefing on what you should use and what goes into a burn bag, it's explained that sensitive materials, those materials that people see on a need-to-know basis go into the bag. For instance, I worked in economic policy. Sometimes information that came over from the Federal Reserve to the Assistant to the President for Economic Policy was market sensitive. Therefore, that information, instead of—I would put in a burn bag to be taken care of.

Mr. BEN-VENISTE. To whom did you speak about looking for Mr. Foster's burn bag material before you actually went to see if you could find it?

Ms. MATHEWS. I again mentioned it to the senior staff in the Chief of Staff's Office to see if they agreed that it would be a good idea to obtain it.

Mr. BEN-VENISTE. Who did you speak to?

Ms. MATHEWS. I don't remember specifically at that time who I talked to about that.

Mr. BEN-VENISTE. But you basically got the green light as you had with the trash, go ahead, maybe that's a good idea?

Ms. MATHEWS. Yes, sir.

Mr. BEN-VENISTE. Who did you speak to about getting the burn bag material which had been collected?

Ms. MATHEWS. A uniformed division officer that was posted outside the Oval Office. As you walk down the hall, there's always a uniformed division officer there.

Mr. BEN-VENISTE. What did you say to that gentleman?

Ms. MATHEWS. I don't remember the specific words I used, but asked him how—if the burn bags—how would you know if they had been dumped for the evening and how to obtain that material.

Mr. BEN-VENISTE. Again, you didn't know one way or the other either whether Mr. Foster had a burn bag and if he had a burn bag in his office, whether that burn bag had been dumped?

Ms. MATHEWS. That's correct, I did not know at that time if he had one in his office.

Mr. BEN-VENISTE. But you were taking the extra precaution of trying to find out?

Ms. MATHEWS. Yes, sir.

Mr. BEN-VENISTE. What did the uniformed officer tell you?

Ms. MATHEWS. I'm not sure if he gave me a phone number or placed a call himself, but there was a call placed and the bag was brought, the commingled bag was brought to the Chief of Staff's Office.

Mr. BEN-VENISTE. So, when you say "commingled," unlike the material that was in the larger receptacle for the trash, which had each individual trash bag separate and still maintaining the integrity of those individual trash bags, the burn bag material had all been dumped into one larger receptacle; is that correct?

Ms. MATHEWS. That's correct. Everything was mixed.

Mr. BEN-VENISTE. From what you know about burn bags, is it correct that the actual burn bag is then retained, it's not destroyed along with its contents?

Ms. MATHEWS. That's correct. Individuals keep their own and they're emptied on a nightly basis.

Mr. BEN-VENISTE. Now, you are looking at a large quantity of classified material, sensitive material; correct?

Ms. MATHEWS. That's correct.

Mr. BEN-VENISTE. Tell us again what you did.

Ms. MATHEWS. I tipped the bag over and pulled out a few items, and then stopped.

Mr. BEN-VENISTE. What made you stop?

Ms. MATHEWS. I was concerned, thinking about my security briefings, and I was concerned about going through the materials of the entire West Wing, that that may not have been appropriate for me.

Mr. BEN-VENISTE. Now, at that point, is it correct that you did not know that Officer O'Neill, who was delegated that evening with the responsibility of emptying the burn bags from the second floor of the West Wing, had not dumped Mr. Foster's burn bag?

Ms. MATHEWS. No, I did not know that.

Mr. BEN-VENISTE. Going back to the trash material that you had collected, did you have a conversation with Mr. Nussbaum at any point that evening with respect to either what you were going to do or what you had done?

Ms. MATHEWS. With respect to the trash?

Mr. BEN-VENISTE. Yes.

Ms. MATHEWS. No.

Mr. BEN-VENISTE. Now, what did you do after you had looked through the burn bag material, the commingled burn bag material, and realized that you might come across things that you should not be looking at?

Ms. MATHEWS. I did not go through the whole bag. I pulled out a few items, tipped it back up. At that time a senior staff person also commented they thought this probably wasn't a good idea. Then——

Mr. BEN-VENISTE. Who was that?

Ms. MATHEWS. That was Gene Sperling, and then I actually asked Bill Burton what should we do with the burn bag.

Mr. BEN-VENISTE. What did he say?

Ms. MATHEWS. He said to seek the advice of Mr. Nussbaum, the Counsel.

Mr. BEN-VENISTE. What did you do?

Ms. MATHEWS. I went and asked Mr. Nussbaum about the burn bag.

Mr. BEN-VENISTE. Where did you find Mr. Nussbaum?

Ms. MATHEWS. I think that it was in the Chief of Staff's Office secretarial area.

Mr. BEN-VENISTE. Did you explain to Mr. Nussbaum what you had done and what you had looked through and what your concerns were?

Ms. MATHEWS. I explained to them that I had gotten the bag and had a question about what we should do with it.

Mr. BEN-VENISTE. Did you tell him at that time that you had already isolated the trash bag from Mr. Foster's office?

Ms. MATHEWS. I'm sorry, I don't recall.

Mr. BEN-VENISTE. Is there any reason why you would not have relayed to him your successful venture in recapturing Mr. Foster's trash?

Ms. MATHEWS. There is no reason, but I don't specifically recall.

Mr. BEN-VENISTE. Did Mr. Nussbaum say anything to you, in words or substance, you ought to get rid of that, throw that away?

Ms. MATHEWS. No, he did not. He advised me that Vincent Foster did not——

Mr. BEN-VENISTE. With respect to the trash, I mean.

Ms. MATHEWS. No, no, I'm sorry. I thought you were referring to the burn bag.

Mr. BEN-VENISTE. Going to the question of the burn bag material, what did Mr. Nussbaum say to you?

Ms. MATHEWS. With regards to the burn bag, he advised me of two things. One is that he told me that Vincent Foster did not have a burn bag in his office, and he also said that it was a commingled burn bag and we should use the usual processing for our evening.

Mr. BEN-VENISTE. You did not have the burn bag at that point, did you? Where was it physically?

Ms. MATHEWS. It was in the outer office where I was sitting.

Mr. BEN-VENISTE. You had brought that material there?

Ms. MATHEWS. The material had been—the material from the burn bag, in the large burn bag had been brought to the Chief of Staff's Office.

Mr. BEN-VENISTE. By the uniformed——

Ms. MATHEWS. Uniformed division officer.

Mr. BEN-VENISTE. At that point, you advised the same uniformed division officer that you had no further need for that material?

Ms. MATHEWS. I don't remember exactly how that took place and who I called, but yes, I do remember it was being taken care of and the bag would go back for processing.

Mr. BEN-VENISTE. Mr. Chairman, I have no further questions at this moment.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you, Mr. Chairman.

Mr. Watkins, we have bounced around a number of these questions and I would like to get this in context so we can be clear and understand it. The Secret Service, on the night of July 20, 1993, informed you of the finding of Mr. Foster's body.

Mr. WATKINS. Yes.

Senator BOND. You called the Park Police, it was your understanding they were the law enforcement agency that had found the body and were investigating the death; is this correct?

Mr. WATKINS. Yes, Senator, that's correct.

Senator BOND. They took you with them to the house of the Foster family?

Mr. WATKINS. That is correct.

Senator BOND. Sometime during that car ride, either in direct conversation or overhearing a conversation, you learned that no note had been found?

Mr. WATKINS. Yes, sir.

Senator BOND. You subsequently discussed that fact with Mr. McLarty and Mrs. Foster at the house?

Mr. WATKINS. Sometime in the evening at the house, yes.

Senator BOND. You then beeped your Deputy, Ms. Patsy Thomasson, and asked her to go look for the note in the Counsel's Office?

Mr. WATKINS. Yes.

Senator BOND. But you did not talk to Mr. Nussbaum, the Counsel?

Mr. WATKINS. No, sir.

Senator BOND. Did you in any way indicate to the Park Police, the investigative body, the Secret Service or anyone with investigative authority that you were directing Ms. Thomasson to go look for the note?

Mr. WATKINS. No, Senator. At the house—while at the house, I had very little conversation with the Park Police. There were a lot of other people around. I was trying to get telephone numbers for people in Arkansas Mrs. Foster wanted notified. I had conversations with Ms. Bowman, one of the sisters who was a close friend of mine. Senator Pryor was there. I had a lot of conversation with him, and I did not engage in much conversation with the Park Police.

Senator BOND. You did not know when Ms. Thomasson called you back, whether she could have even gotten access to Foster's office; is that correct?

Mr. WATKINS. I assumed that she could have. As I said, she was very involved in handling all matters, to deal with the facilities and the offices in the White House.

Senator BOND. But she was a political appointee, not employed by the Counsel's Office, not directly responsible to the Counsel's Office; she did not have at that time, for whatever reason, a security clearance?

Mr. WATKINS. As I said earlier, I'm not confident that I knew she didn't have a security clearance at the time. Part of her responsibility as Director of Office of Administration was facilities. There was a department called facilities, facilities management, and that was under her supervision.

Senator BOND. Notwithstanding that even though this was an investigation of a violent death, it's your testimony that you chose to rely on your Deputy, a political appointee, rather than the Park Police, the Secret Service or any other investigative agency, that you asked her to go and make a search of Mr. Foster's office?

Mr. WATKINS. Senator, I asked her to look for a note. We were concerned and inquiring about the why, and was there possibly a note at his office. I also knew that the Park Police had been in touch with the Secret Service for some 5 hours prior to making that request. I'm not slamming the Park Police at all, but they had not shown a locality of interest, to me at least, in the office of Vince Foster. I assumed that if this had been of great concern with them, they would have contacted the Secret Service, whom they had been in touch with.

Senator BOND. Your assumptions were that they were not even concerned about looking for a note. They had told you they had not found a note, so you just assumed that they weren't really interested in finding out if there was a note in the office?

Mr. WATKINS. No, sir. They did not express much concern about the office. I had known on the way over to the house—they mentioned that there was not a note at the scene, and sometime during the course of the evening, we discovered there was not a note at the house. I don't mean to say they were not interested in a note. They just didn't talk about the office.

Senator BOND. Sergeant Braun, in her deposition and later in testimony before this Committee, at page 35 of her deposition said, "prior to my leaving, I asked that David Watkins have the office sealed." It's your testimony that she did not say that to you?

Mr. WATKINS. It is my testimony that I do not recall such a request.

Senator BOND. Mr. Webster Hubbell, when he testified before us, said that he heard the request, a request to seal the office made, and you're telling us that we should believe that Sergeant Braun was incorrect when she testified that she asked you?

Senator SARBANES. Mr. Chairman, could Senator Bond phrase that question again. I don't recall that Hubbell testimony, if I understood his question.

Senator BOND. Mr. Hubbell stated that he overheard a request to seal the office. I'm now asking Mr. Watkins if he contends that she did not ask that question?

Mr. WATKINS. When I was here last week, Senator, waiting to testify, I watched on television some of Mr. Hubbell's testimony. I do not believe that he said that. I think what he said was that his wife and some other—a friend told him they thought he said something about the office should be locked and conveyed that to someone.

Senator BOND. Either you or Mack?

Mr. WATKINS. Either me or Mack McLarty, yes.

Senator BOND. All right. Mr. McLarty. Going back to the testimony of Sergeant Braun, can you give us any reason why she would have fabricated this request or otherwise not told the truth about the request she made to you?

Mr. WATKINS. No, Senator. I'm not saying that, but, again, I think that her partner, Detective Rolla, said that he didn't hear her say that. If she said that, if she made that request, I didn't hear her make that request. It was not in her reports following her reports of the scene—I mean of the investigation reports. It was not in Detective Rolla's investigation reports. So I do not recall her making such a request of me.

Had she made a request, because it was my job to be a facilitator as part of Administration and Management, part of my functions, I think I would have done one of three things: One, I would have conveyed that, referred that to Mr. McLarty, the request, who was there at the house; or I would have asked someone in the Counsel's Office about that request; or I would have mentioned it to the Secret Service.

Senator BOND. Mr. Watkins, we will have to draw our own inferences from the other testimony. We know, in the other testimony,

that Detective Rolla reported later that she related to him that she had requested. But you knew at the time that Mr. Foster had been engaged with you in the matter of Travelgate, for instance, which was a very upsetting question to you and Mr. Foster. Did you know if any of the files or the petty cash or the ledgers from the Travelgate investigations may have been in Mr. Foster's office?

Mr. WATKINS. No, sir, I did not know that.

Senator BOND. You did not know whether any other information on Travelgate may have been in that office?

Mr. WATKINS. No, sir, I did not.

Senator BOND. Thank you, Mr. Watkins.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Just very quickly—thank you, Mr. Chairman and Senator Sarbanes—then I'll turn to Mr. Ben-Veniste.

I would just like to, for my own purposes, clarify here. How long a time were you in the car with the Park Service employees, that is, from the time they picked you up to the time you went to the Foster home? Where did they pick you up?

Mr. WATKINS. They picked me up at my house, Senator. I don't know, it took us a little while to get there because there was some roadwork up in the Georgetown area. I would guess 15 minutes, 15 to 20 minutes.

Senator DODD. Was there much conversation in the car?

Mr. WATKINS. There was not a lot of conversation. There was conversation in the question—again, my main question that night was why, and I think I engaged with—more with Detective Rolla than anyone. I think he had asked me was there anything that Mr. Foster was particularly upset about.

Senator DODD. Who was driving the car, Mr. Watkins?

Mr. WATKINS. I think Investigator Braun was driving.

Senator DODD. But were you asking more questions of them or were they asking more questions of you, just as a general——

Mr. WATKINS. As a general, I don't know. I don't know which way it was. I told them about the Travel Office, and he said that he had been upset about the Travel Office as we all were. I was concerned at the time—I asked them about the fact, I asked, who notifies the family? Since I know them, do I notify them? They said no, that's part of our job. They told me that, that they notify them, and I was in one sense relieved but also understood how difficult it was for them, and we talked about that a little bit.

Senator DODD. Did they inquire of you as to why Vince Foster—had they drawn the conclusion that a suicide had occurred?

Mr. WATKINS. It's my definite feeling that they thought it was a suicide.

Senator DODD. You weren't talking about alternatives to that?

Mr. WATKINS. No, sir, never talked—never mentioned any alternatives to suicide.

Senator DODD. Did they inquire of you as to Mr. Foster's state of mind, as to why he might have done it, the questions you might get under a normal investigation of this kind?

Mr. WATKINS. Yes, they asked about his state of mind.

Senator DODD. There is just one other point that I would like to clear up on this. Did you know where Patsy Thomasson was when you beeped her, or did you call her office first to see if she was at the White House?

Mr. WATKINS. No, sir, I beeped her.

Senator DODD. You weren't aware whether or not she was in a restaurant or home or any place?

Mr. WATKINS. No, sir, that was the way we would normally communicate.

Senator DODD. There is a question about who was in the White House, even at that hour, certainly with a lot of people in it. Were you aware the President was doing a program that night for Larry King Live?

Mr. WATKINS. Yes, sir, I was.

Senator DODD. So you were probably aware of the fact that there was some key White House personnel around the White House?

Mr. WATKINS. Up until 10 p.m., the Larry King Live show was over at 10 p.m., I believe, from taping it.

Senator DODD. Why did you call Patsy Thomasson, why her?

Mr. WATKINS. Patsy was my assistant, and she was the natural one for me to call and ask——

Senator DODD. Was she your top assistant?

Mr. WATKINS. Yes.

Senator DODD. So she wasn't just some other person at the White House?

Mr. WATKINS. No.

Senator DODD. This is the person directly under you, the person you deal with on almost all matters of this kind——

Mr. WATKINS. That's correct.

Senator DODD. —in terms of operations at the White House and so forth?

Mr. WATKINS. That's correct.

Senator DODD. Thank you. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Dodd. To follow up on that, Mr. Watkins, it was your testimony that when you beeped Patsy Thomasson, it was for the purpose of advising her of the fact of Mr. Foster's death; is that correct?

Mr. WATKINS. It is my best recollection that at the time I beeped her, it was to notify her of Vince's death. Subsequent to that and before she returned the beep, there was conversation and talk about a note, there was possibly a note at the office. So I asked her, when she called me back, I said to Patsy, we've talked about the possibility—there was not a note at the scene, there was not a note at the house. Might there be a note in his office, and I asked her to go look for a note.

Mr. BEN-VENISTE. Do you have any reason to believe from anything you have heard or seen that Ms. Thomasson removed anything from Mr. Foster's office that evening?

Mr. WATKINS. Mr. Ben-Veniste, I have no question about that, I mean in my mind.

Mr. BEN-VENISTE. Do you have any reason to believe from anything you have heard or seen that either Mr. Nussbaum or Ms. Williams removed anything from the office that evening?

Mr. WATKINS. I have no knowledge of that.

Mr. BEN-VENISTE. Thank you.

Now, one final question to Ms. Mathews on the subject of this burn bag again, and in order to clarify the issue. If Mr. O'Neill is correct, the uniformed Secret Service officer who was charged with emptying the burn bag material on the second floor of the West Wing on July 20, 1993, that he had not been able to get into Mr. Foster's office that evening to dump the material because by the time he was ready to do that, other people were already in the office, and he backed off, then it would follow if Mr. Foster had placed anything in the burn bag on July 20, 1993, that that material would still be intact in the burn bag? Can you follow that?

Ms. MATHEWS. I'm sorry. Yes, if it wasn't dumped, then it would not have been in the bag that I had.

Mr. BEN-VENISTE. I have nothing further.

Senator SARBANES. Mr. Watkins, how did you come to go with the Park Police to the Foster home? Did they ask you to go with them?

Mr. WATKINS. Originally, I think the request was from me. I told them that I would like to go with them to notify the family.

Senator SARBANES. As I understand it, they like to have someone from the family with them when they make such notifications; is that correct?

Mr. WATKINS. I have since learned that from their testimony, but I was not aware of that at the time. It was just a request of me to accompany them.

Senator SARBANES. So they came by and picked you up?

Mr. WATKINS. They did, yes, sir.

Senator SARBANES. You went with them and your wife followed you over; is that correct?

Mr. WATKINS. Yes, sir.

Senator SARBANES. Who actually made the notification to Mrs. Foster?

Mr. WATKINS. Detective Rolla, I believe.

Senator SARBANES. Were you there or behind them or out of the house?

Mr. WATKINS. I was behind them. We were on the steps going into the front door.

Senator SARBANES. Detective Rolla told Mrs. Foster on the staircase. Is that what happened?

Mr. WATKINS. It's a very small entryway, and I think he actually had stepped into the entryway, and she was coming down the stairwell right into the entryway, and I was right in the front door.

Senator SARBANES. You were right behind them?

Mr. WATKINS. Yes, sir, she could see me.

Senator SARBANES. Then he told her and what happened?

Mr. WATKINS. Just cries of anguish.

Senator SARBANES. Then, did you seek to comfort her at that point?

Mr. WATKINS. My wife did. My wife went to her, and I think they took her upstairs as she was just in great grief.

Senator SARBANES. Thank you.

The CHAIRMAN. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman, and my thanks to the panel.

Mr. Gearan, I do have a couple of questions to get you involved in here, but that will come a little bit later on.

First, Ms. Mathews, on the night of July 20, 1993, you were in the Office of the White House Chief of Staff; is that correct?

Ms. MATHEWS. I was in the secretarial suite, yes, sir.

Senator GRAMS. I know we're going to cover some ground that you've already talked about, but what were you doing in the office that night? What was your responsibility?

Ms. MATHEWS. I was answering the phones.

Senator GRAMS. That was your job for that evening. What was the time you were supposed to be there?

Ms. MATHEWS. For that evening. I was the most junior person there that evening, so I started answering the phones.

Senator GRAMS. What were your hours? Was it from 4 p.m. to 10 p.m.?

Ms. MATHEWS. My normal hours and my normal duties? I was generally there from 8:00 to between 9:30 or 10 p.m. at night.

Senator GRAMS. Did you take the call that night from the Park Police?

Ms. MATHEWS. I'm sorry, the call?

Senator GRAMS. You did take a call that night from the Park Police? You answered the phone——

Ms. MATHEWS. I answered the phone throughout the evening. As far as my recollection of specific phone calls that came in, I don't recall. There's only one, and that is the conversation with Mr. Burton that I described earlier.

Senator GRAMS. Mr. Burton who is the Chief of Staff to White House Chief of Staff Mack McLarty?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. Do you know the name of the Park Police representative who called that night?

Ms. MATHEWS. No, sir, I'm sorry, I don't.

Senator GRAMS. Could it have been Major Hines, or is your testimony you're not sure?

Ms. MATHEWS. I'm not sure.

Senator GRAMS. Now, you overheard part or some of that conversation; is that correct?

Ms. MATHEWS. Yes, sir, I heard the end from where I was standing.

Senator GRAMS. Did the subject of sealing Mr. Foster's office that night come up in that conversation, again, do you recall?

Ms. MATHEWS. Not that I recall in the conversation.

Senator GRAMS. Did Mr. Burton mention to you anything about the need to lock Mr. Foster's office either during the conversation or sometime later that evening?

Ms. MATHEWS. After—sometime during the evening, yes, after the phone call.

Senator GRAMS. Do you remember what Mr. Burton said specifically about the office and sealing it or locking it?

Ms. MATHEWS. While I don't recall the specific words, the general gist was Mr. Nussbaum should lock the office.

Senator GRAMS. So he mentioned it was Mr. Nussbaum who should lock the office?

Ms. MATHEWS. That's correct.

Senator GRAMS. Were you under the impression that night that the office had then been locked, and that it was Mr. Nussbaum who was going to take care of that?

Ms. MATHEWS. That was my impression, yes, sir.

Senator GRAMS. I know you have a question about the time, but do you have any idea of when that time was? Was this before you had went upstairs and walked by the office, and noticed the door was open, so it would have been after 10:41 or 10:42? Do you have any recollection or could you put that in any kind of a timeframe when you had the impression that that office should be locked?

Ms. MATHEWS. Yes, sir. It would have been after I had gone up to get my things and after I had gone to get the trash.

Senator GRAMS. So you had noticed, then, that the door was open so we could presume it was after 10:42?

Ms. MATHEWS. I noticed the door being open on the first trip, which was the trip to go and get my work around the corner.

Senator GRAMS. But you were still under the impression that the office had been locked by someone that night, that was your impression?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. Ms. Mathews, I have here a typed note. It's document Z139 and we're going to put it up on the screen here, but I want to read part of this aloud.

It says:

The Park Police called and Bill was on the phone with them. Dee Dee and David were in Mack's office, too. I realized somewhere in the conversation, which I was hearing from one side, that there was no note found in the car. As a matter of fact, I think Bill asked the policeman.

I then asked the three of them if anyone had made sure that the trash had not been dumped in Vince's office. At that point, Bill said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10 p.m. I don't remember who told Bernie, but he went up and locked the office.

Ms. Mathews, did you type this note?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. "Dee Dee" refers to Dee Dee Myers at the time?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. "David" referred to?

Ms. MATHEWS. David Dreyer.

Senator GRAMS. "Bill" referred to Bill Burton?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. "Bernie," of course, referred to Mr. Nussbaum?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. The note states it was your impression that night that Bernie Nussbaum went up to lock Mr. Foster's office; is that correct?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. Was it your impression that Mr. Nussbaum, again, had locked the office that night? That's your impression?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. Why did you have that impression?

Ms. MATHEWS. Because at one point in the evening when I went upstairs, the door—I saw the door shut and, therefore, I thought that it had been locked.

Senator GRAMS. This was after you had seen the door open earlier?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. Now, you had a conversation with Mr. Nussbaum about the burn bags?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. That was down in the Chief of Staff's Office. Did you ask him personally at that time whether the door had been locked?

Ms. MATHEWS. No, sir, I did not ask him.

Senator GRAMS. You did not ask him and he didn't say that the door had been locked?

Ms. MATHEWS. No, sir.

Senator GRAMS. Does the note that I read here and that was up on the screen, does this note accurately reflect your understanding of what happened the night of July 20, 1993?

Ms. MATHEWS. Yes, sir.

Senator GRAMS. So it was your understanding that night that Bill Burton received a call from the Park Police about locking Mr. Foster's office, and it was also your understanding that Mr. Burton believed that Mr. Nussbaum should do it and that Mr. Nussbaum did, in fact, under your impression, lock the office that night as it says here in your own words; is that correct? That was your——

Ms. MATHEWS. I apologize, but if we could back up. On the first point, about the conversation, I'm not sure exactly how you stated it, but it was not clear to me that the Park Police had—the part about connecting the conversation with the locking of the office.

I remember—the only part of that conversation I recall had to do with the trash and a note, the question of a note. So I apologize. The second point—I'm sorry, the third point about was it my impression that Bernie Nussbaum had locked the office is correct, and I apologize, but the second one? I'm sorry.

Senator GRAMS. That Mr. Burton believed it was Mr. Nussbaum who should lock the office?

Ms. MATHEWS. Yes, that is what was stated at that time, yes, sir.

Senator GRAMS. Mr. Gearan, can you recall any conversations you had with anyone the night of July 20, 1993, again, about sealing Mr. Foster's office? Did you talk to anybody about that that night?

Mr. GEARAN. Yes, Senator. I recall a conversation I had with David Gergen.

Senator GRAMS. David Gergen was at that time the new Counselor to President Clinton; is that correct?

Mr. GEARAN. That's correct, Senator.

Senator GRAMS. What do you remember about the conversation?

Mr. GEARAN. I recall a conversation I had with him on the phone in which he asked me whether Mr. Foster's office was locked.

Senator GRAMS. Did you solicit that conversation, that part of the conversation, or did Mr. Gergen again voice a concern about the office being locked on his own? You didn't lead the witness, so to speak?

Mr. GEARAN. I did not ask him. He just asked me and I don't recall him expressing a concern.

Senator GRAMS. He didn't tell you why he wanted to know?

Mr. GEARAN. No, Senator.

Senator GRAMS. What was your answer when he asked if it had been locked?

Mr. GEARAN. I recall that I checked with Bill Burton. I can't recall whether I did that in person or put Mr. Gergen on hold on the telephone. I recall pretty readily getting back to David and telling him that the door was locked.

Senator GRAMS. That was because Bill Burton told you the door had been locked?

Mr. GEARAN. That's correct, Senator.

Senator GRAMS. Do you have any idea what timeframe this was in?

Mr. GEARAN. I do not, Senator. As you know, the President was doing Larry King Live and we worked on a statement after that, but I cannot put in the exact time.

Senator GRAMS. So you don't know if the call came in after the President finished with Larry King?

Mr. GEARAN. Oh, it was certainly after that, and I would put it after the time when the President had already left to go to the Fosters' residence.

Senator GRAMS. That was about 11 p.m. that he left to go to the residence?

Mr. GEARAN. Somewhere in that vicinity.

Senator GRAMS. It's your understanding, then, that Mr. Gergen was under the impression as well that night after his conversation with you that Vince Foster's office had been locked on the night of July 20, 1993?

Mr. GEARAN. Yes, Senator.

Senator GRAMS. Thank you, Mr. Gearan.

Ms. Mathews, you said earlier you had received a message that night on the phone and you decided that it should be hand-delivered to the residence. Did you hand-deliver a message that night to the residence? Was that my understanding?

Ms. MATHEWS. Yes, sir, I went over and delivered the message that a phone call had come through.

Senator GRAMS. To whom did you deliver that message?

Ms. MATHEWS. I don't remember specifically who was standing in the hallway of the residence, but there was a group of senior staff and I delivered the message that a phone call had come.

Senator GRAMS. What was the message that you thought was so important you had to hand-deliver it?

Ms. MATHEWS. I don't remember specifically who the call was from, but do remember that it was either the Park Police or the hospital or someone that I considered an official body and that I wouldn't want to risk a transfer of the call.

Senator GRAMS. So they had requested you deliver that for someone to return a call to the Park Police or was there a message involved that the Park Police wanted relayed to the residence?

Ms. MATHEWS. I'm not certain it was the Park Police.

Senator GRAMS. Or a hospital.

Ms. MATHEWS. It was someone, and I took it over so someone could return the call, yes, sir.

Senator GRAMS. It was a number that was delivered there?

Ms. MATHEWS. I'm sorry, I took over a phone number, yes, sir.

Senator GRAMS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Senator.

Ms. Mathews, I want to return and focus again on the tragic night, your suggestion to go through the bag and, in fact, that was done. My question is, after you went through the bag, did you reduce to writing what you had found in the bag or in any way make some type of a written memorial of the contents of the bag?

Ms. MATHEWS. Yes, sir, I made an inventory.

Senator BRYAN. I believe that we have that inventory in the form of an exhibit that's characterized as Z140?

Ms. MATHEWS. Yes, sir.

Senator BRYAN. Ms. Mathews, I'm showing what has been identified here in the record as Exhibit Z140. It appears to be a handwritten note. Let me ask you if you recognize this document?

Ms. MATHEWS. Yes, sir, I wrote that document.

Senator BRYAN. That is your handwriting?

Ms. MATHEWS. Yes, sir.

Senator BRYAN. When did you write the note?

Ms. MATHEWS. The evening of Vincent Foster's death.

Senator BRYAN. You would have written that concurrently with your examination of the contents of the trash bag?

Ms. MATHEWS. Yes, sir.

Senator BRYAN. Could you take us through the contents and explain to us how you summarized each of the items that you recorded there?

Ms. MATHEWS. Sure. The first item is the President's schedule. It was a copy of the President's daily schedule. The second item, it says "note about NW"—and I think that's referring to Northwestern, as in Northwestern University Law School—"article and the Columbia article." Those, as I recall, are law articles.

Senator BRYAN. Do you recall what the subject matter was?

Ms. MATHEWS. I'm sorry, I don't. "Memo on change in summer clerk assignment." This was a memo about moving a summer intern-type person from one assignment to another. It says "Dee's press briefing." That's Dee Dee Myers' press briefing, a copy of something that is produced each day. "Congress Daily" is a Washington publication. "The President's trip book." That would have been a book that gets put together when the President goes on a trip and gets walked through the manifests and schedules. "The White House Bulletin," another Washington publication. "A news summary," which is something produced by the Communications Department in the White House, and "many credit card receipts."

Senator BRYAN. Ms. Mathews, I believe you've previously testified that the trash is collected each day, placed in a trash bag and removed from the White House. Is that your understanding of the process?

Ms. MATHEWS. Yes, sir, each night they dump each individual's trash.

Senator BRYAN. May we reasonably conclude that the trash bag and its contents would represent those items which Mr. Foster would have been working with or have placed in the trash bag on the day of his death, namely July 20, 1993?

Ms. MATHEWS. Yes, sir, that was my assumption.

Senator BRYAN. Mr. Watkins, if I might ask you—again, I think one of the central focuses here is your phone call to Ms. Thomasson and why the phone call was made to her. Let me ask you, again, in your own words to explain the working relationship that you had with Ms. Thomasson and why the call was placed to her on this particular evening.

Mr. WATKINS. Ms. Thomasson was my principal Deputy. She was the person that I would naturally have called, in my mind, to do that. She was the one that reported to me. She, as I said, worked with all the facilities in the offices and she was from—I just called and asked her to do that.

Senator BRYAN. I take it, putting this particular event of this evening in question, during the course of the working relationship that you had with her, that you called upon her frequently to handle matters for you that were of an administrative nature?

Mr. WATKINS. Absolutely. Patsy was very reliable, very professional. She's just someone I relied on every day in most things.

Senator BRYAN. Although it may not have been her title, but in terms of the working relationship with her, she was your Chief of Staff, the number one person you worked with?

Mr. WATKINS. Absolutely, yes, sir.

Senator BRYAN. Were there other persons who worked directly under you in the hierarchy at the White House?

Mr. WATKINS. There were, but mostly support staff.

Senator BRYAN. So, in terms of undertaking any kind of a specific request or assignment, it would be your practice and assignment to call upon her for these matters?

Mr. WATKINS. Yes, Senator.

Senator BRYAN. I thank you. I'll yield any time left back to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Just one thing, Ms. Mathews. On the second trip up to the second floor that evening, when you walked past the Counsel's Office and you noticed that it was locked, given what you had overheard in Mr. Burton's conversation earlier about seeing whether the office could be locked, is there any reason why you would not have reported back to Mr. Burton the next time you saw him that evening that the office was locked?

Ms. MATHEWS. That was actually—the time that I saw the door locked was the third trip, just for the record.

Mr. BEN-VENISTE. The third trip, OK?

Ms. MATHEWS. I did not report it back to him that it was.

Mr. BEN-VENISTE. Are you certain of that?

Ms. MATHEWS. I do not recall reporting back to him.

Mr. BEN-VENISTE. Is there any reason you would not have mentioned to him, given the fact you had overheard the prior conversation, that, in fact, the office was now locked as you had observed?

Ms. MATHEWS. There was no reason that I would not have.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Gearan, I would like to refer to Exhibit Z464. You might have a copy of this. These, I believe, would be some notes that you made and I believe it says 11:45, 7/29. I assume it would be 7/29, 1993. Are you familiar with this document?

Mr. GEARAN. Yes, Senator.

Senator SHELBY. Is that your handwriting?

Mr. GEARAN. Yes, it is.

Senator SHELBY. That's flashing up on the screen. Were these notes made on that date, about that time, by you?

Mr. GEARAN. That is my handwriting, Senator. It would be my practice to try to date and time things as best I could.

Senator SHELBY. Were these notes relative to a conversation that you had with Mr. Heymann, who was the Deputy Attorney General of the United States, and also David Gergen was in the conference call?

Mr. GEARAN. That's correct.

Senator SHELBY. The three of you at this time?

Mr. GEARAN. That's correct, Senator.

Senator SHELBY. That was apparently in the morning on July 29, 1993.

Senator BOXER. Mr. Chairman, could I have a copy of that? I cannot read this off the screen.

Senator SHELBY. I'm sure we'll give you a copy of it.

Senator BOXER. I would greatly appreciate it because I can't follow.

Senator SHELBY. Mr. Gearan, what position did you hold at the White House on July 29, 1993?

Mr. GEARAN. Assistant to the President and Director of Communications.

Senator SHELBY. Is that your position today?

Mr. GEARAN. It is, sir.

Senator SHELBY. What is your job, your responsibilities as Director of Communications at the White House?

Mr. GEARAN. To explain and communicate the President's agenda, to answer questions from members of the press and to try to provide information to the public through members of the press corps.

Senator SHELBY. These notes that I would ask you about as we go down them referring to—it says "Philip Heymann phone call"; is that correct?

Mr. GEARAN. That's correct, Senator.

Senator SHELBY. It says "Janet and Phil recommended the following things." In other words, you're talking about Janet Reno, the Attorney General of the United States, and the Deputy Attorney General, Phil Heymann, regarding the note; is that correct?

Mr. GEARAN. That's correct.

Senator SHELBY. In the context. What did they recommend, according to your note, if you'll translate the note?

Mr. GEARAN. Senator, this was in the period when the writings were found in Mr. Foster's briefcase, and the question for the White House——

Senator SHELBY. Excuse me a minute, if you would, please. The note had not, at this point in time, been released to the press, had it?

Mr. GEARAN. Senator, the note was found on the 26th, I believe.

Senator SHELBY. The 26th, OK.

Mr. GEARAN. Of July.

Senator SHELBY. When was it released to the press?

Mr. GEARAN. On the 28th it was confirmed, to my understanding. It was confirmed——

Senator SHELBY. Two days later?

Mr. GEARAN. —the existence of it was confirmed.

Senator SHELBY. This is subsequent to the release; is that right?

Mr. GEARAN. That's correct, sir. It was released to the contents of the noted. I think at that point in time it was already affirmed that a note was found.

Senator SHELBY. It was in the public domain by now?

Mr. GEARAN. The contents were not, sir.

Senator SHELBY. The contents were not?

Mr. GEARAN. Correct.

Senator SHELBY. Just the fact that a note had been found was released, but not the contents in the note?

Mr. GEARAN. That's correct, Senator.

Senator SHELBY. So let's go back. You made these notes regarding the conversation that you were having with Phil Heymann, the Deputy Attorney General. Joined with you was David Gergen, who was Counselor to the President?

Mr. GEARAN. Yes, Senator.

Senator SHELBY. Help me along here. These were notes. It says that Janet Reno and Phil Heymann recommended that you—meaning the White House—leave the release to the investigators, the Park Police and the FBI regarding the contents of the note; is that correct?

Mr. GEARAN. That's correct, sir. The question that day, if I may, for the White House was to seek the guidance from the Deputy Attorney General as to what was the appropriate course we should follow for the circumstances of releasing the contents of the note. Should we do it, should the investigators do it, and the purpose of this call——

Senator SHELBY. How would it be handled, in other words?

Mr. GEARAN. I'm sorry.

Senator SHELBY. How it would be handled?

Mr. GEARAN. That's correct.

Senator SHELBY. When you say in the next note, "they will look at circumstances surrounding finding of the note," is that the Department of Justice will look or the people of the press?

Mr. GEARAN. It's unclear from my note, Senator. I guess I would read this as the Park Police and the FBI field office.

Senator SHELBY. The investigators will look at circumstances surrounding the finding of the note?

Mr. GEARAN. That was his guidance to the White House.

Senator SHELBY. When you said next, "can't promise when to release," is that the Department of Justice or how would you interpret it?

Mr. GEARAN. It could be the Park Police or the investigators themselves.

Senator SHELBY. "Can't promise when to release"?

Mr. GEARAN. When the contents of the notes would be released.

Senator SHELBY. They had the note, did they not? Did they have the note, the investigators?

Mr. GEARAN. That's correct.

Senator SHELBY. So it was in their control?

Mr. GEARAN. Correct.

Senator SHELBY. They would make the release. The next thing I see here says "send all questions to them or to the Department of Justice." This was Heymann saying this to you; is that right?

Mr. GEARAN. That's correct, sir.

Senator SHELBY. He also says "I think chances are Park Police will release in some time. If wrongdoing in finding note, it will take longer." What do you mean by that? What did he mean by that?

Mr. GEARAN. I would read my notes as telling the White House that he thinks—"he," Mr. Heymann—that the chances are that the Park Police will release it in some time, meaning, I think, I would suspect, a short period of time. If there was wrongdoing in the finding of the note, it would take longer. He was——

Senator SHELBY. Sure, a longer investigation, obviously?

Mr. GEARAN. I would think that would be a fair reading of it, yes, sir.

Senator SHELBY. The next thing in your handwriting, as I understand it, says "authenticity of note and circumstances under which it was found." Was that you were trying to figure out how to get the news out regarding the note, or what does that mean?

Mr. GEARAN. I would suspect this is the process that the investigators would need to go through.

Senator SHELBY. To authenticate the note?

Mr. GEARAN. To authenticate the note with relevant handwriting analysis and to look at all the circumstances under which it was found.

Senator SHELBY. Then Heymann's statement was, best guess—all will go forward without any interruption. It doesn't say that. I'm just reading it that way. Do you want to interpret that? Read what you mean.

Mr. GEARAN. He's saying that his best guess—"his," again, Mr. Heymann's—is that it will all go forward without an investigation and that it would be—there would be suspicions if it was released today.

Senator SHELBY. Then, the next item, what are you saying there, "talking with the Park Police at high level"—this is Heymann speaking, and you're making notes; right?

Mr. GEARAN. That's correct, sir. I would read this as he is talking—"he," again, Mr. Heymann—is talking with the Park Police at a high level, and there's a parenthetical, "[Tom Collier]," who I know to be the Chief of Staff for the Secretary of the Interior.

Senator SHELBY. Did Heymann make clear—is this the next item here in your handwriting, "made clear that White House wanted to know if there was an objection regarding the releasing of the note"?

Mr. GEARAN. That's correct.

Senator SHELBY. The next thing would be the risk of release. In other words, it would arouse suspicion if it was released by the White House, maybe?

Mr. GEARAN. Yes. Again, Senator——

Senator SHELBY. Rather than through the investigator?

Mr. GEARAN. That's correct, and the purpose of our call was to seek his guidance as to what the appropriate course is for the White House to take.

Senator SHELBY. Through the Justice Department?

Mr. GEARAN. Through the Deputy Attorney General, correct.

Senator SHELBY. He was speaking for himself and, obviously, for the Attorney General?

Mr. GEARAN. He was the appropriate person that we were told to deal with when matters involved an investigative nature.

Senator SHELBY. Your next thing, would you interpret that, your notes? "There's a sense"——

Mr. GEARAN. "There's a sense from Park Police, including Phil and Department of Justice and probably the Washington field office, that too much of the investigation in the inquiry before, when and after, was exercised by the White House and those too close to Vince." Then it gets difficult to read.

Senator SHELBY. Does it say "suspicion is extremely dangerous"? Is that what your——

Mr. GEARAN. I think that's what it says, sir.

Senator SHELBY. It says "do everything in power to quiet suspicion"?

Mr. GEARAN. "To quiet suspicion."

Senator SHELBY. In other words, Heymann was giving you good advice—giving the White House good advice, wasn't he?

Mr. GEARAN. I think he was making clear his position.

Senator SHELBY. Was that advice heeded?

Mr. GEARAN. Certainly by the Communications Office.

Senator SHELBY. But belatedly?

Mr. GEARAN. I'm sorry?

Senator SHELBY. It was belatedly heeded, wasn't it?

Mr. GEARAN. I certainly heeded his advice.

Senator SHELBY. I want to turn to the second page. Mr. Chairman, can I proceed on this?

The CHAIRMAN. Yes, in the interest of continuity and time and to keep it flowing, yes.

Senator SHELBY. Mr. Gearan, on the second page after it says "power to quiet suspicion," Heymann said, it says "cross out" something. What do your notes refer to there?

Mr. GEARAN. It seems to say "the complaint," but it's fairly unclear.

Senator SHELBY. Sir?

Mr. GEARAN. The cross-out, Senator? I believe it says "the complaint," but I'm not certain of that.

Senator SHELBY. OK.

Mr. GEARAN. The next line says "I've had heated discussions on the way the documents were handled with Bernie."

Senator SHELBY. This is coming from Philip Heymann, the Deputy Attorney General of the United States, on this occasion, quoting, again, your handwriting, "I've had heated discussions on the way documents were handled by Bernie Nussbaum."

Mr. GEARAN. Correct.

Senator SHELBY. Where it says "Janet Reno" is this with——

Mr. GEARAN. Senator, I don't know if that refers to that sentence or the next three points.

Senator SHELBY. Go ahead with the next thing.

Mr. GEARAN. It says "Janet Reno"——

Senator SHELBY. —"worried about" what?

Mr. GEARAN. "Worried about four."

Senator SHELBY. What is she worried about, according to your notes?

Mr. GEARAN. I can't recollect with any certainty, Senator. I could read this as worried about the 4 days that lapse in between Mr. Foster's death and when the note was found.

Senator SHELBY. The search of the office and the finding of the note?

Mr. GEARAN. Yes, sir.

Senator SHELBY. Was that a 4-day period?

Mr. GEARAN. That's my understanding.

Senator SHELBY. Would that be a plausible thing?

Mr. GEARAN. That's correct, not his death, but from the 22nd to the 26th.

Senator SHELBY. "The lateness of finding the note," that's all incorporated in her concern about that?

Mr. GEARAN. That's how I would read my notes, sir.

Senator SHELBY. "The length of time in disclosure to us"——

Mr. GEARAN. That's correct.

Senator SHELBY. —that was to the Justice Department?

Mr. GEARAN. To the Justice Department, yes, sir.

Senator SHELBY. How long, Mr. Gearan, did the White House keep the note prior to disclosure to the Justice Department?

Mr. GEARAN. Senator, my understanding——

Senator SHELBY. Twelve hours or a whole day?

Mr. GEARAN. My understanding, it was found late afternoon on the 26th, and it was disclosed, then, the next day in the early evening, by 6 p.m., to the Attorney General.

Senator SHELBY. So Heymann's relating to you in this conversation that the Attorney General was worried about—that would be a common thing to think about, wouldn't it, like the Attorney General was doing?

Mr. GEARAN. That's how I would read my notes, sir.

Senator SHELBY. Then the next statement, I believe, in your handwriting, if I can understand it, says "nobody believes there's anything but suicide"; is that correct?

Mr. GEARAN. Uh-huh.

Senator SHELBY. You go down further and it says—this is Heymann talking again to you and Gergen—the odds are against a story in a day or two on note arrow pointing down. What does it mean by the arrow pointing down? These are your notes.

Mr. GEARAN. They are. Senator, I would read that there was, I think, a tremendous assumption, this having affirmed and disclosed that a note was indeed found and turned over to the Department of Justice, that the contents of this note would be a very sought-after document in Washington. I would read this that the chances that this note came into the public domain were fairly significant.

Senator SHELBY. Then it says in your notes "1 in 3 or 1 in 4 chances," of what? "Suspicion story"?

Mr. GEARAN. Senator, I don't know——

Senator SHELBY. Read your notes there.

Mr. GEARAN. Yes, sir. It says "1 in 3 or 1 in 4 chances" and underneath that it says "Park Police or Washington field office."

Senator SHELBY. But it also says on the left "of suspicion story"?

Mr. GEARAN. Correct.

Senator SHELBY. In other words, that the people will be suspicious about the whole story, perhaps?

Mr. GEARAN. I don't recall, Senator.

Senator SHELBY. But you could read that that way, couldn't you?

Mr. GEARAN. One could.

Senator SHELBY. Sure.

Mr. GEARAN. It could also be read as——

Senator SHELBY. I understand. Go ahead. It could be read as what?

Mr. GEARAN. It could also be read as, if the White House disclosed the contents of the note that day, there would be suspicions raised and, of course, that was the purpose of our call to the Department of Justice to get their——

Senator SHELBY. Or suspicions raised of not releasing it, too?

Mr. GEARAN. Either way, Senator.

Senator SHELBY. You could read it both ways?

Mr. GEARAN. Yes, sir.

Senator SHELBY. Let's go down to your other handwriting there. It says "if any sign of White House Counsel and the Chief of Staff people"—what does that mean? "If there's any sign of White House Counsel or COS"—Chief of Staff—"people, any one of those people supervising closely the investigation, they're asking questions, you'll see all hell break loose." In other words, are they worried again at the Department of Justice, along with Mr. Heymann, if they, the White House people, White House Counsel are controlling the investigation or how this comes out "all hell will break loose"? Is that a logical——

Mr. GEARAN. Senator, I think it supplements the point he made earlier about the so-called heated discussions that he had had with Mr. Nussbaum.

Senator SHELBY. The way all this was handled?

Mr. GEARAN. Yes, sir.

Senator SHELBY. Then your next note was, if I can interpret it right—and you correct me if I'm wrong—"best idea is from Mr. Heymann saying release when investigators want to." In other words, let the investigators release——

Mr. GEARAN. Again, Senator, this was a question as to what we should do to the members of the press. That is the sole purpose of this call and the question became when we should release it. His

guidance to the White House at that time was his best idea was that we should release it when the investigators want to.

Senator SHELBY. Your next note says "display openness to investigators." This was Heymann to you; is that right?

Mr. GEARAN. Yes.

Senator SHELBY. And Gergen?

Mr. GEARAN. That's correct, sir.

Senator SHELBY. On the third page, your notes from this conversation say "I'm reluctant, I don't feel I can tell you," and then you've got "complaints." Now, this, again, is Mr. Heymann relating to you and Mr. Gergen how to handle this and also some of his judgments; is that right?

Mr. GEARAN. Yes. He was, again, giving us his judgment as to what we should do about disclosure of the contents of the note.

Senator SHELBY. What's your next words there, is it "reactions of suspicions"? Would you read that?

Mr. GEARAN. Yes. It says "reaction of suspicions." I would take that to mean revealed to us, meaning the Department of Justice, I would take it.

Senator SHELBY. In other words, the Justice Department was concerned about the reactions of suspicions?

Mr. GEARAN. I think that could be a reading of it. I think it could also be that he was aware of the concerns that he had previously expressed to Mr. Nussbaum.

Senator SHELBY. Your next note, does that mean basically in all stages, White House has controlled the investigation in all ways?

Mr. GEARAN. It says "basically in all stages controlled in all ways."

Senator SHELBY. It would be an inference that it was talking about the White House Counsel?

Mr. GEARAN. That would be—that's my recollection.

Senator SHELBY. That would be the way you would read this?

Mr. GEARAN. Yes, sir.

Senator SHELBY. "They don't feel they can see," is that "say"?

Mr. GEARAN. That would be a fair reading.

Senator SHELBY. "They don't feel they can say they've conducted an inquiry." Is Mr. Heymann speaking about the investigators, the Park Police and the FBI, up to then and the Justice Department?

Mr. GEARAN. I don't know.

Senator SHELBY. "They don't feel they can say they've conducted an inquiry." In other words, it was a sham up to now?

Mr. GEARAN. Senator——

Senator SHELBY. Isn't that what he's saying to you?

Mr. GEARAN. I would read it as the concerns that he had previously expressed twice about the nature of the search and the concerns that he had expressed to Mr. Nussbaum.

Senator SHELBY. He's talking about the investigators, isn't he?

Mr. GEARAN. Yes, I would assume "they" are investigators.

Senator SHELBY. Your next words say "much too much control from beginning." Could that clip be interpreted as the White House had too much control from the beginning of the investigation?

Mr. GEARAN. Senator, it doesn't——

Senator SHELBY. How would you interpret your notes there?

Mr. GEARAN. It doesn't say White House, but I think, again, it supplements his broader point about the concerns about the nature of the way the investigation was conducted from the beginning.

Senator SHELBY. And who was involved in controlling the investigation, the White House Counsel. So you couldn't read it any other way, could you?

Mr. GEARAN. I think——

Senator SHELBY. This is Mr. Heymann who is telling you how concerned he is, as the Deputy Attorney General, about how the investigation has occurred up to now? Isn't that the context of this?

Mr. GEARAN. Yes, sir.

Senator SHELBY. The next words, as I interpret your handwriting—you go ahead and tell us what it says, "it was a mistake"——

Mr. GEARAN. "It was a mistake to rely on silence"—I would assume that's "of low-level investigators when dealing with a high-level case."

Senator SHELBY. In other words, Mr. Heymann was telling you again it was a mistake to rely on the silence of low-level investigators, in other words, the Park Police and others to keep their silence on what kind of investigation they did, which they didn't—they're already saying they didn't do much of an investigation. They weren't permitted to do one. In other words, it was a mistake to rely on them to keep quiet about Mr. Nussbaum's not letting them do an ordinary investigation into the White House Counsel's Office. Isn't that what Heymann was saying?

Mr. GEARAN. I would read that as the concerns that, again, he had expressed about the search on the 22nd with the various law enforcement officials.

Senator SHELBY. Absolutely. That's just what I'm referring to.

Senator BOXER. Could I get my time at some point?

Senator SHELBY. Drop down just a little more and it says "DG"; is that right? Is that David Gergen?

Mr. GEARAN. That would be David Gergen.

Senator SHELBY. "PH" is Phil Heymann?

Mr. GEARAN. That's correct.

Senator SHELBY. By "DG," what do your notes record?

Mr. GEARAN. My notes record that David said "we will not release on the recommendation of the Department of Justice. It will be by the Park Police." Again, this was the release of the contents of the note.

Senator SHELBY. The contents of the note?

Mr. GEARAN. Yes, sir.

Senator SHELBY. What does Phil Heymann say?

The CHAIRMAN. Senator, let me do this: The Committee has, because you have undertaken a very thoughtful manner of this examination, gone well over the time limit. I'm going to ask unanimous consent, because I think the Senator only has a few more minutes, and if anybody objects, why, then, we'll go to this side. You've already been very gracious, but I think it's—we want the facts and so——

Senator SHELBY. Mr. Chairman, if I could, I'm just trying to finish this. It's not going to be long. I think it's important.

Senator BOXER. Because of my schedule, I wanted to know how much longer the Senator was going to pursue, just in fairness.

The CHAIRMAN. The Senator has indicated he'll be several more minutes, so with your—with the indulgence of everyone, I'd ask that we give him several more minutes to finish.

Senator BOXER. Several means 7?

Senator SHELBY. I will try to do it in 5 or 6, but then——

Senator BOXER. That's fine. No problem.

The CHAIRMAN. I want to commend all the Members of the Committee. We're trying to do this in an orderly manner and I think it takes the back-and-forth to accomplish it.

Senator, go ahead.

Senator SHELBY. Mr. Gearan, let's go back to where we were, and you identified some of your handwriting as DG, PH notes on the left; right?

Mr. GEARAN. Yes, sir.

Senator SHELBY. It says "we will not release note on recommendation of Department of Justice. It will be done by the Park Police." This is David Gergen——

Mr. GEARAN. Correct.

Senator SHELBY. I guess he's telling you and Philip Heymann that?

Mr. GEARAN. I think that's the conclusion of the conversation, that we are affirming to the Department of Justice that we sought his guidance on how we should talk about that note, and we were indicating to him what the White House would do.

Senator SHELBY. Mr. Heymann says in your notes "I'm entirely happy with that." In other words, what you're going to do?

Mr. GEARAN. Yes.

Senator SHELBY. "And it's better that you"—"if you avoid any statements other than you turn them over," in other words, the note, is that what you're saying there or do you want to interpret your writing?

Mr. GEARAN. Yes. I would interpret it——

Senator SHELBY. I think you'll do it better than I would.

Mr. GEARAN. Mr. Heymann says "I'm entirely happy with that," meaning what Mr. Gergen had concluded. "It's better if you avoid any statements other than you turn them over to the Attorney General at 7:00, then the Park Police at 9:00 p.m.," and "them" being the individual pieces of paper of the note.

Senator SHELBY. What is "AG"? Does that mean Janet Reno at 7:00 at the White House?

Mr. GEARAN. Yes, Senator. I would interpret that as—my understanding is that they met with the Attorney General the night before.

Senator SHELBY. At the White House?

Mr. GEARAN. Correct.

Senator SHELBY. Regarding all this?

Mr. GEARAN. That's my understanding.

Senator SHELBY. Then, "the Park Police at 9:00 p.m.," what do you mean by this? Did they suggest you give it to the Park Police?

Mr. GEARAN. My understanding, Senator, is that when it was initially turned over to the Attorney General and the Deputy Attorney General, they then asked for the Park Police investigators to come over to the White House, which apparently happened at 9 p.m. I was not there, but that's my understanding.

Senator SHELBY. Your next note says "do finding, questions to investigators." What do you mean by that?

Mr. GEARAN. I suspect it's his guidance that we should refer questions on the finding of the note to the investigators.

Senator SHELBY. I want to go to the last page I have here. This is, again, a conversation with Heymann and Gergen and yourself. "I learned that FBI"—insert field office—"was informed of document," in other words, "note." What do you mean there? Is this Mr. Heymann telling you this?

Mr. GEARAN. Yes, sir.

Senator SHELBY. "I learned"—"Heymann learned that the FBI field office was informed of the document," and that is the finding of the note?

Mr. GEARAN. That's correct.

Senator SHELBY. Would there be anything wrong with the FBI field office knowing about this note?

Mr. GEARAN. No, Senator. I think that the context of the discussion was that there would be a fairly high likelihood that given the attention that was brought upon this matter, and given the considerable press interest in this note——

Senator SHELBY. Considerable would be somewhat of an understatement, wouldn't it?

Mr. GEARAN. It very well may be, Senator. But, regardless, that there would be a great deal of interest in the release of the contents of this note, and I think he was pointing out the fairly wide distribution of the contents of the note.

Senator SHELBY. They already had it?

Mr. GEARAN. They?

Senator SHELBY. The FBI already had the note?

Mr. GEARAN. That's my understanding.

Senator SHELBY. Going down again, DG is David Gergen. PH on your notes in your left margin is Phil Heymann. David Gergen says "We need"—I assume—to know it when Park Police releases notification for a response. In other words, how you would respond to the release of the contents of the note from a communications perspective at the White House. Is that a fair reading?

Mr. GEARAN. Yes, Senator. All of this was in the context of preparing for the inevitable press questions that the White House would receive.

Senator SHELBY. PH, Phil Heymann says "absolutely, I'll set it up."

Mr. GEARAN. Meaning the notification to the White House before the Park Police releases the contents of the note.

Senator SHELBY. Under your next entry, "when people come over to ask questions, do so private and whatever they want." Does that mean when people, meaning investigators, come over to the White House to ask questions, do so private and whatever they want, in other words, it should be done in private? What do you mean by that?

Mr. GEARAN. I can't recall. I think this is——

Senator SHELBY. What did Heymann mean or what do you think he meant?

Mr. GEARAN. I would read this, again, as further guidance of Mr. Heymann to us that the White House display in every way an openness and receptivity to the investigators as they do their work.

Senator SHELBY. Then, the next entry you have, "Philip Heymann, docs"—documents, is that what you mean, documents? It says "docs have been distributed over my objection." This is Deputy Attorney General Phil Heymann to you. He's talking about a copy of the note. Now, you used the word "documents" here, which is plural. Were there two pages to this note instead of one? In other words, you don't say note. You don't say document. You use "documents," plural.

Mr. GEARAN. Senator, I do. It was a quick note. As you see on page 3 under Mr. Heymann, again, I also say "it's better if you avoid any statements other than you turn them over." I think the point of my notes was the various pieces of paper that were found, and my best read of these notes is that the plural was used because, while there was one sheet of paper, by the time they were found they were in, as you know, many individual pieces.

Senator SHELBY. Could it have been Mr. Heymann referring to other documents in the Deputy Counsel's Office? In other words, there were a lot of documents in the office.

Mr. GEARAN. No, Senator. The sole purpose of this call was to seek the guidance from the Department of Justice as to how the White House should appropriately answer the questions. In the wake of the Travel Office report, the guidance was that we should seek the guidance of the Deputy Attorney General. That's the purpose of this call. I think the plural references back to the fact that there were many pieces of paper and not that there were any other documents mentioned.

Senator SHELBY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I'm going to yield to Senator Boxer. If the Senator will let me—Mr. Gearan, Senator Shelby was moving you along as he was running through his questioning and, on occasion, I was a little concerned that you weren't getting the opportunity to give a fully complete answer, although I think you took care of that pretty well. But there is one place I have an inquiry to make of you.

On page 3 it says, "it was a mistake to rely on silence of low-level investigators in dealing with a high-level case." The way the question was put to you, and you didn't quite answer, I didn't think, was that somehow the low-level investigators were being silenced in their inquiry. My reading of that is they were silent in acquiescing to certain procedures or processes that Heymann and others, particularly now in retrospect, but at the time in Heymann's case would have had done differently.

I just ask you if you can elaborate on the meaning of that particular phrase, because at the time I wasn't quite sure you were going down that path, and you—he closed it and moved on to the next question. I'd like you to elaborate on that.

Mr. GEARAN. I appreciate that, Senator. I would read that the silence, meaning that there was not an objection expressed in Mr. Foster's office on that day on the 22nd, that one should not mistake

that, not that they were being silenced but their silence on that day is how I would read that part of the note.

Senator SARBANES. Thank you very much.

Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much. Mr. Gearan, the purpose of these hearings is to ascertain whether the White House obstructed an investigation into Mr. Foster's death and, in the process, mishandled documents in the office.

I really want to thank Senator Shelby for bringing your notes forward because, I tell you, to me it's very revealing. The undercurrent is there was this conspiracy to stop this investigation, not to cooperate with the law enforcement people. Here you are calling on the Department of Justice, asking every question in the book because you were responsible for answering the press; is that correct?

Mr. GEARAN. That's correct, Senator.

Senator BOXER. So you didn't just have a conversation with the people at the White House, did you, you had a conversation with the Deputy Attorney General; is that correct.

Mr. GEARAN. That's correct, Senator.

Senator BOXER. You asked that Deputy Attorney General every question in the book that was on your mind or that you thought might come up; is that correct?

Mr. GEARAN. Senator, we wanted to make very clear that in the reporting by the White House that the information that the White House provided to members of the press, that it was done appropriately as per the guidance that we were soliciting from the Department of Justice.

Senator BOXER. Did anybody in the White House ask you to keep any information from the Attorney General's Office, not to ask certain questions, not to probe for answers?

Mr. GEARAN. No, Senator.

Senator BOXER. So no one called you in and said, what are you doing, Gearan, talking to the Department of Justice here?

Mr. GEARAN. No, Senator.

Senator BOXER. Thank you. I'd like to turn to you, Ms. Mathews. You are really a key person here because you were there on that night. Now, you undertook certain actions. Did you undertake those actions because someone ordered you to search the office, search the trash?

Ms. MATHEWS. No——

Senator BOXER. Why did you undertake the actions that you did?

Ms. MATHEWS. No, no one asked me to. I thought it was a good thing to preserve the trash.

Senator BOXER. Why did you think it was a good thing to preserve the trash?

Ms. MATHEWS. At first I thought that there might be a note and went and searched and thought we should look because that would probably be helpful, and then thought it was helpful to preserve it so I left it in Roy Neel's office.

Senator BOXER. Did anyone say to you what are you doing, stop this immediately, go home, this isn't your business, this should be handled by higher-ups?

Ms. MATHEWS. No, no one stopped me and when I checked, it was agreed that I should go forward with the actions I took.

Senator BOXER. I'm sorry, I didn't hear you.

Ms. MATHEWS. No, no one stopped me and when I asked, I was told to go forward with the actions I was taking.

Senator BOXER. So senior White House officials said that's a good idea, maybe you'll find a note to shed some light on this; is that correct?

Ms. MATHEWS. Yes.

Senator BOXER. In a way that was a compliment to you, was it not, for taking that action?

Ms. MATHEWS. They were confirming my——

Senator BOXER. Basically a good idea and good thinking?

Ms. MATHEWS. Yes.

Senator BOXER. Mr. Watkins, much has been made over you being told to seal the office, that the Park Police that night told you to seal the office although the testimony we received from Sergeant Braun was it was on her way out the door, that she made no notes of it later in her records. But I just want to ask you once again: Do you recall being told to lock or seal or secure Vince Foster's office?

Mr. WATKINS. Senator, I did not hear such a request. Her partner did not hear such a request. It was not in her report.

Senator BOXER. That's correct. Now, when you called your assistant, what exactly did you tell her to do?

Mr. WATKINS. I informed her first of Vince's death, she was not aware of that. I said Patsy, Vince has shot himself and we've been discussing at the house, there was not a note at the scene. There's not a note at the house, and possibly there's a note, he left a note in his office, would you go look.

Senator BOXER. What time did you tell her that approximately?

Mr. WATKINS. It was around 11 p.m.

Senator BOXER. You told her that at approximately 11 p.m. Did you inform anyone else that you had asked her to find that note?

Mr. WATKINS. I told Mr. McLarty, and I told Lisa Foster that I asked her.

Senator BOXER. In making that request, was your goal to help find out why Vince Foster committed suicide?

Mr. WATKINS. Yes.

Senator BOXER. Did you tell her to look for any other papers which might be embarrassing to the White House?

Mr. WATKINS. No, Senator.

Senator BOXER. Did she raise that matter with you?

Mr. WATKINS. No, Senator.

Senator BOXER. So the sole focus was to find a note, was it not?

Mr. WATKINS. Yes, Senator.

Senator BOXER. She was your assistant, was she not?

Mr. WATKINS. Yes, Senator.

Senator BOXER. You trusted her, didn't you?

Mr. WATKINS. Yes, Senator.

Senator BOXER. So, on the night of the death, you're at the home, you've been informed there is no note, and you think to yourself it may be in the office, you call your assistant and you tell her to find a note; is that correct?

Mr. WATKINS. Yes, Senator.

Senator BOXER. You did it because you wanted to be helpful, did you not?

Mr. WATKINS. I wanted to be helpful, yes.

Senator BOXER. You didn't, or did you, think about any other papers that might be in that office?

Mr. WATKINS. No, Senator.

Senator BOXER. You didn't mention those to anyone else?

Mr. WATKINS. No, Senator.

Senator BOXER. Did anyone higher up than you tell you to make sure that office was searched and that embarrassing papers or potentially embarrassing papers be removed from that office?

Mr. WATKINS. No, Senator.

Senator BOXER. Thank you very much. I'll yield my time back to counsel.

Mr. BEN-VENISTE. Mr. Gearan, with respect to the conversation you had with Mr. Heymann on the 29th, was Mr. Gergen present?

Mr. GEARAN. Yes, he was on the phone.

Mr. BEN-VENISTE. Who else was on the phone?

Mr. GEARAN. I don't recall anyone else on the phone.

Mr. BEN-VENISTE. On that occasion, sir, was it correct that you knew that, in addition to Mr. Gergen, that Mr. Collier had voiced some question about whether the Administration should take something of a different tack in terms of its cooperation with the police?

Mr. GEARAN. I was not aware of any concerns by Mr. Collier, no.

Mr. BEN-VENISTE. Did you subsequently learn that Mr. Collier had spoken to Mr. Heymann?

Mr. GEARAN. I know it's referenced in my notes, but I'm not aware of it, no.

Mr. BEN-VENISTE. Is it fair to say, sir, that there were others in the Administration who had a concern that perhaps Mr. Nussbaum had been too close to Mr. Foster, too close to the situation and that it was time to take a step backward?

Mr. GEARAN. I'm certainly aware of the Justice Department view which referenced that perhaps there are people too close to Vince, as my notes reflect.

Mr. BEN-VENISTE. For example, with respect to the question of the release of the content of the torn-up note, was it the decision you came to that the timing of the release of the content should be left to the police rather than to the White House?

Mr. GEARAN. That was what Mr. Heymann recommended to us, that it be left to the investigators, which is what we did.

Mr. BEN-VENISTE. In fact, that is the course which the Administration followed?

Mr. GEARAN. That's correct.

Mr. BEN-VENISTE. I have nothing further at this time, Mr. Chairman.

The CHAIRMAN. We have a vote, but I think we can at least start Senator Mack's round of questioning. Then, at that point, we will have another vote after this one, this is a live quorum call. That will take us well past 12:30 by the time we finish, so it's my intent that we will adjourn after Senator Mack's questioning so that we can make the two votes and then we'll resume at 2 p.m.

There are other questions of this panel that our Senators will put to them, then we will go to Patsy Thomasson which will be the next panel.

With that, Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman. Mr. Gearan, I want to direct my questions to you this morning.

I do so, I must say, with some ambivalence. I honestly feel that you have—and I think it's obvious in the notes that we've gone through—that you have made every effort to put yourself in a position where you can answer some very difficult questions that are going to be posed to you throughout the day on many, many different subjects. In fact, you made the comment just a moment ago that you make every effort to get that information, and I commend you for doing that.

On the other hand, though, I see so many misstatements, so many things over time that have been stated by members of the White House staff all the way to the President of the United States that over time turn out to be inaccurate. That's the reason that I have some ambivalence about these questions and the discussion that we're going to have. But I welcome you here this morning and I will proceed.

Mr. GEARAN. Thank you, Senator.

Senator MACK. In a December 22, 1993 interview, when asked about the files that were removed from Foster's office, the President stated he didn't "know what's in the file" and he stated that there was, again, "this one file, and know if there were any more, but there was this file which related to work he had done before he came to work at the White House. There was never any indication that anyone wanted to see it. Obviously, if anybody feels that there is some relevance to any ongoing investigation, we'll do whatever we can to cooperate."

The President is implying that there was only one file. This is the file that I referred to earlier in these hearings, one small file; and that Foster wasn't actively working on Whitewater. Looking at the larger stack of documents, which the Committee later obtained, what the President said about one file wasn't correct, was it?

Mr. GEARAN. Senator, I don't know in the instance of the President's interview how extensive he was referring to it. I'm aware that he said he was aware of the limited scope of what was presented, but beyond that I'm not——

Senator MACK. But these files that we now have came from a whole series of other files that were in Foster's office, not one file. I mean, the White House kept referring to this one file; in fact, all the way up to last week. These documents came from a whole series of files in Foster's office. Do you agree with that?

Mr. GEARAN. Senator, I'm not aware of the actual volume of the files that you're referencing or how considerable they are or are not. I've never seen, personally, the files that you are referring to.

Senator MACK. Looking again at the President's statement, we also know that Foster was actively working on the First Couple's tax returns in the spring of 1993, which is well after he came to the White House. So the part of the statement that the President

makes where he says Foster's files related to work he had done before he came to the White House isn't correct either, is it?

Mr. GEARAN. Senator, I'm not sure exactly what you are referring to, but my understanding is that at the time of Mr. Foster's death, he had files on many things as he had been involved with the Clintons' legal work prior to their service in Washington.

Senator MACK. Let me ask you a question. You are saying, even today, you are saying that Foster did not have any Whitewater files in his office?

Mr. GEARAN. Senator, I don't know the range of the files that existed in Mr. Foster's office. It did not become an issue certainly in this period of time that we're discussing today in and around his death. I'm aware that at the time of his death he was doing the requisite kind of financial disclosure reports and other personal matters associated with the President's official role as President; relevant reports, financial disclosure reports, I believe the blind trust as well.

Senator MACK. Again, I find it difficult—and maybe I'm misunderstanding you. Maybe we're talking past each other, but what you are saying is as of this day, you are still saying that, as far as you were concerned, there were no Whitewater-related files in Vince Foster's office at the time of his death?

Mr. GEARAN. Senator, I have no reason, I have no personal basis on which to make that judgment. I'm aware that, at the time of his death and afterwards in the search, that different files were sorted out by Mr. Nussbaum: Those files relevant to official White House business, those files personally associated with Mr. Foster himself, and those personal files to the Clintons. I'm aware of the distribution of those files from his office.

Senator MACK. Is it your belief, without having personally seen these, from what you've heard from others, that there were Whitewater files in Vince Foster's office?

Mr. GEARAN. I have no reason to doubt that, Senator.

Senator MACK. Again, these are statements that were made on December 22nd. I'm now moving to December 23rd. After the President had released Whitewater documents to the Justice Department, you stated that Federal investigators had not requested them; but rather they were furnished voluntarily. You went on to say that, and again I quote, "at no time did anyone, anywhere, anyhow ever remotely suggest that there was any impropriety regarding the President and Mrs. Clinton's investments."

I'm going to ask that document number 234 be placed for view. We see Mr. Foster's notes reflecting that he was concerned about the connection between Madison Guaranty and Whitewater. He asked, "Was McDougal trying to circumvent bank loss? Why HRC is getting loans from others."

When you made that earlier statement about anyone anywhere remotely suggesting impropriety, were you aware that Mr. Foster was thinking about these things?

Mr. GEARAN. No, Senator.

Senator MACK. As the press and communications pointman on Whitewater, did you know that he was wondering if the First Lady was getting loans from others and how this related to covering losses at Madison?

Mr. GEARAN. I was not aware of this writing, no, Senator.

Senator Mack. Would you agree that you and other White House officials generally relied upon the 1992 report prepared by Jim Lyons when you stated that the Clintons initially invested $68,000 in Whitewater?

Mr. GEARAN. Senator, I was not the principal person responding to the press on matters associated with Whitewater. I never personally schooled myself in the details. But my understanding during the course of the campaign is that that's how it was handled.

Senator MACK. Later, you had to revise the estimate—maybe I've got this wrong—you are indicating that you—let me finish the statement. You tell me.

You had to revise the estimate downward because the President and First Lady had actually only invested $46,000.

Mr. GEARAN. Senator, at that point in time, that's a statement referencing to December, I was not the principal person dealing with the press on the details of the Whitewater matter.

Senator MACK. But you're aware of that correction?

Mr. GEARAN. I'm aware of the press reports, yes.

Senator MACK. I'd like to show another document here, number 236. At the bottom of that document, it says "Colorado came up with a theory to justify, but it's shaky." That is Mr. Foster's writing and he appears to be concerned about the theory behind the Clintons' public statements on the amount of their losses. Again, were you aware that Mr. Foster had concerns about the analysis of those in Colorado?

Mr. GEARAN. No, sir.

Senator MACK. In a December 20, 1993 Washington Times article, it states that "officials have said records taken by White House officials from Mr. Foster's office were made available to Park Police investigators for review."

Is that a statement that you would have reviewed? Again, this is a December 1993 reference to the files in Vince Foster's office.

Mr. GEARAN. Could you repeat the statement?

Senator MACK. Sure. "Officials have said"—this is a quote from The Washington Times. "Officials have said records taken by White House officials from Mr. Foster's office were made available to Park Police investigators for review." Is that a statement you would have——

Mr. GEARAN. I don't know that I made that statement. My understanding was during the course of the review of the documents in Mr. Foster's office on July 22, 1993, that that's how they separated the documents, into the three categories that I've mentioned.

Senator MACK. Yes. Now, if you didn't make that statement probably you would have been, this would have been brought to your attention though. Again, it's part of your job. You're going to review statements that are being attributed to the White House; and if there's an error in those statements, I assume you would correct them.

Mr. GEARAN. I would certainly make every effort, Senator. I'm just not certain whether that's a White House statement. I'm not familiar with that particular quote.

Senator MACK. It is quoted as, again, being White House officials. I just have another point or two and then I'll be finished.

The CHAIRMAN. All right, Senator.

Senator MACK. The point that I'm making here, though, is that that statement, which I don't believe was corrected, in fact is not true. The implication or what is implied in that statement is that, at the time, the Park Police had the opportunity to review those documents, and we all know at this point that that simply is not true.

Mr. GEARAN. Senator, what I tried to do in the December period was to make it clear as to the division of the three categories in which the files in Mr. Foster's office were separated into. That's the effort that we made at that point in time.

Senator MACK. But my point here, Mr. Gearan—and I think this goes right to the heart of it—is the impression created by the White House official is an impression that there was a review by the Park Police at that time of those documents. That did not take place; and, to my knowledge, that statement was never corrected by the White House.

Mr. GEARAN. Senator, in every statement that I made in the statement that we issued in December, it made clear these three points. I don't recall personally being asked whether they individually reviewed them or not. It would have been our intent certainly to describe the scene as completely as we could have. That they reviewed—they were described by Mr. Nussbaum, which category they would fit into. I don't recall the specific newsclip that you're referring to in that instance.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. We have about 2 minutes left on the vote. We're going to stand in recess and will reconvene at 2 p.m.

[Whereupon, at 12:12 p.m., the hearing was recessed, to be reconvened at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. I am reluctant to start without at least the Ranking Member and due to the fact that we have both had policy commitments—and here is the Senator. I was going to explain that's why I anticipated his delay, since we both had policy commitments, but at this time Senator Sarbanes is here. He would normally have the opportunity to ask questions.

I don't know if you want to start it here or we start it here. Whichever way you want——

Senator SARBANES. I think we ended the questioning on this side so why don't we go back to your side.

The CHAIRMAN. Fine. I have two other Senators who are on their way from our conference who want to ask questions. In lieu of that, I'll turn to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Watkins, let me bring you back to July 30th. Your testimony is that at the time you called Patsy Thomasson you did not have it in your mind that you wanted her to go to the White House; is that correct?

Mr. WATKINS. July 20th?

Mr. CHERTOFF. July 20th. I'm sorry.

Mr. WATKINS. My recollection is that I called Patsy to notify her of Vince's death, yes. By the time she called me back, there had been discussion at the house about seeing if there was a note in Vince's office and I asked her to do so.

Mr. CHERTOFF. How much discussion had there been at the house?

Mr. WATKINS. Just general discussion among people there.

Mr. CHERTOFF. Among which people?

Mr. WATKINS. Mr. McLarty specifically, Mr. McLarty and I discussed it, Lisa Foster and I discussed it.

Mr. CHERTOFF. You have a specific memory that Mr. McLarty discussed that with you before you asked Patsy Thomasson to go to the White House.

Mr. WATKINS. I do.

Mr. CHERTOFF. That means that you asked Patsy Thomasson to go to the White House sometime after Mr. McLarty arrived at the house; is that your testimony?

Mr. WATKINS. That is correct.

Mr. CHERTOFF. About how much time elapsed between the time that you first paged Ms. Thomasson and had those discussions, and then eventually had her go to the White House?

Mr. WATKINS. Approximately 30 minutes.

Mr. CHERTOFF. Your testimony is it's 30 minutes from the time you paged her until the time she called you back?

Mr. WATKINS. I think so.

Mr. CHERTOFF. You're confident of that?

Mr. WATKINS. I believe that's correct.

Mr. CHERTOFF. Would it surprise you to learn that you paged her at 10:34 p.m. and she actually entered the White House at 10:49 p.m.?

Mr. WATKINS. Yes.

Mr. CHERTOFF. I can tell you that based on records we've gotten from the White House, specifically Z651 which is a pager record of

Patsy Thomasson, and then records from Secret Service, 14848 which is a record of her entry into the White House, she received a page from you at 10:34 p.m. and she entered the White House at 10:49 p.m. That is 15 minutes; correct?

Mr. WATKINS. Yes.

Mr. CHERTOFF. Now, do you recall where she was when you finally made contact with her by telephone?

Mr. WATKINS. I believe that she—as I recall, she told me she was at a restaurant.

Mr. CHERTOFF. That was a restaurant in Georgetown?

Mr. WATKINS. I don't recall where—which restaurant it was.

Mr. CHERTOFF. When you first called her, was it your intent to have her come to the house?

Mr. WATKINS. To come to the Foster house, no.

Mr. CHERTOFF. You knew she knew the Fosters; right?

Mr. WATKINS. Yes, I knew she knew Vince, I don't know if she knew Lisa or not.

Mr. CHERTOFF. When you first tried to contact her, didn't you want to find out where she was?

Mr. WATKINS. I think I asked her where she was and she said she was at a restaurant, but I don't recall which restaurant.

Mr. CHERTOFF. But wasn't it your specific intent when you first paged her to find out what her location was?

Mr. WATKINS. I don't recall that. I think my—I called her to notify her that Vince had died.

Mr. CHERTOFF. When you originally paged her, is it your testimony you didn't have any assignment in mind for her?

Mr. WATKINS. I do not recall that. My recollection is that I called her first to notify her of Vince's death and after that, subsequent to that, when she called me, we'd had conversation about a note, and I asked her to look for a note.

Mr. CHERTOFF. So, when you first called Ms. Thomasson to notify her, you didn't care where she was; is that your testimony?

Mr. WATKINS. I didn't have any reason to know where she was.

Mr. CHERTOFF. You weren't interested in finding out where she was.

Mr. WATKINS. I didn't say that. What I said was that I didn't know where she was. I paged her. That's all.

Mr. CHERTOFF. Did you leave a message on her pager?

Mr. WATKINS. Yes, to call me.

Mr. CHERTOFF. Did it say anything besides that?

Mr. WATKINS. I don't believe so.

Mr. CHERTOFF. Did it say—I'm reading from Z651—"please page David Watkins with your location"?

Mr. WATKINS. I don't know, Mr. Chertoff.

Mr. CHERTOFF. Now, Mr. Watkins, you've previously testified a moment ago that it was not your intention to ask her to come to the house; right?

Mr. WATKINS. That is correct.

Mr. CHERTOFF. So the only other reason that you could probably have wanted her location was to find out how quickly she could get to the White House; correct?

Mr. WATKINS. That's an assumption you're making. I don't know.

Mr. CHERTOFF. Is it a true assumption or a false assumption?

Mr. WATKINS. I don't recall. I don't recall asking her about her location.

Mr. CHERTOFF. If we have the Elmo available, maybe we could put it up on the—maybe I could refresh your memory if we look at the pager document.

Can you read that? It says "Please page David Watkins"—misspelled—"with your location." Does that help refresh your memory that when you called her at 10:34 p.m. you wanted to know where she was?

Mr. WATKINS. It doesn't refresh my memory. It says "David"—"please page David Watkins with your location." It doesn't matter, I just wanted to notify her.

Mr. CHERTOFF. You don't doubt that you left this message, do you?

Mr. WATKINS. I don't doubt that I left a message.

Mr. CHERTOFF. You don't doubt this is the message you left, do you?

Mr. WATKINS. I don't know. I don't know what they put on the pager.

Mr. CHERTOFF. Don't you leave the message you want to have on the pager when you make the call?

Mr. WATKINS. Generally that is correct, yes.

Mr. CHERTOFF. They don't make it up at the White House?

Mr. WATKINS. I don't think so, no.

Mr. CHERTOFF. Now, when you called Ms. Thomasson and you told her what had happened with Mr. Foster, she asked to come to the house; right?

Mr. WATKINS. I don't recall that.

Mr. CHERTOFF. Didn't she indicate to you—I'm reading from page 44 of her deposition, "After I had dinner at Sequoia, my pager went off. When I went in, the pager said call David Watkins through the White House switchboard. Called the switchboard and asked to talk to Mr. Watkins and she said give me your number, he wants to call you back. I said I'm at a pay phone, why don't you just let me hold. So I held until she could get Mr. Watkins back on the telephone for me. And Mr. Watkins told me at that point in time that Vince Foster had killed himself and I said you got to be kidding me. What did you say? What did you just say? Patsy, Vince has killed himself. And I said what can I do? Can I come where you are?"

Does that ring a bell with you?

Mr. WATKINS. She may have said that. That would have been a natural comment by her.

Mr. CHERTOFF. What was your response?

Mr. WATKINS. My response, as I recall, was no, there's no reason to come to the house. Would you go to the White House and see if there's a note.

Mr. CHERTOFF. So she had expressed an interest to you in coming to the house; right?

Mr. WATKINS. I do not recall that, Mr. Chertoff.

Mr. CHERTOFF. But you do recall telling her you wanted her at the White House?

Mr. WATKINS. I do recall asking her to go look for a note.

Mr. CHERTOFF. Would it refresh your memory if I were to tell you that the elapsed time between the time you paged her and the time she called you back was more on the order of 5 minutes?

Mr. WATKINS. I don't know.

Mr. CHERTOFF. Is that possible?

Mr. WATKINS. That is possible.

Mr. CHERTOFF. So now is your testimony that in the space of the 5 minutes between the time you paged her and the time you sent her to the White House you had conversations about having her find the note in the office?

Mr. WATKINS. Mr. Chertoff, my testimony is this: That I don't recall the precise time. I do not know the precise time. My testimony is that there was conversation prior to talking to Patsy—prior to ever talking to Patsy about looking for a note. There was—was there—could there have been a note in Vince's office.

Mr. CHERTOFF. So is your testimony now that that conversation might have occurred before you paged Patsy?

Mr. WATKINS. No, I'm not—my recollection is that I paged Patsy to let her know of Vince's death, and then there was conversation—between the time she answered there was some conversation about looking for a note.

Mr. CHERTOFF. That all occurred in about 5 minutes?

Mr. WATKINS. You're saying the 5 minutes, I don't recall the time.

Mr. CHERTOFF. You are still sticking with 30 minutes?

Mr. WATKINS. I'm not sticking with 30 minutes. As I recall, it was about 30 minutes. It was within 30 minutes.

Mr. CHERTOFF. Now, you remember when the agents left the premises, the Foster premises?

Mr. WATKINS. I don't remember precisely when they left, no.

Mr. CHERTOFF. Your testimony is that you do not recall Cheryl Braun asking you to close or seal or secure the office; correct?

Mr. WATKINS. I have stated several times, Mr. Chertoff, I do not recall Ms. Braun asking me to close the office. Her partner did not hear her say that.

The CHAIRMAN. We're not asking you to recall what her partner testified to, Mr. Watkins. You answered the question. You said you don't recall. That's fine.

Mr. WATKINS. I do not recall her requesting that of me.

Mr. CHERTOFF. Do you remember that she stopped to talk with you?

Mr. WATKINS. I do not remember—I don't remember precisely her talking with me, no.

Mr. CHERTOFF. Did you ask her to make sure that the Park Police did not release the identity of Mr. Foster prematurely?

Mr. WATKINS. Sometime during the evening I remember asking her not to release—to give a press release about—until Mrs. Foster—until his mother was contacted. I do not recall if that was at her departure or prior to that.

Mr. CHERTOFF. But your testimony is you don't recall her stopping to talk with you on the way out?

Mr. WATKINS. I do not recall that.

Mr. CHERTOFF. Did you know that Detective Rolla saw you talking on the way out as Ms. Braun was on the way out?

Mr. WATKINS. As I said, I do not recall. I do not recall—my recollection is that I talked with both Mr. Rolla and Ms. Braun, that I don't recall talking to either of them independently through the evening.

Mr. CHERTOFF. You will agree with me at least that at no time did you tell them in the Foster house that you had sent Patsy Thomasson into Vincent Foster's office to look for a note; correct?

Mr. WATKINS. I did not tell them that I had sent Patsy Thomasson to look for a note.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Mr. Watkins, at the time you made your telephone call to Patsy Thomasson, you were at the Foster home; correct?

Mr. WATKINS. That's correct.

Mr. BEN-VENISTE. What telephone were you using, if you recall?

Mr. WATKINS. I don't really recall which phone I was using. The Foster phone was quite busy during the time. Also, I had a cellular phone and it was being used by others, myself and others, and the battery was low at one point. So I may have—I don't know.

Mr. BEN-VENISTE. At certain points during the evening the testimony from Mr. Hubbell and supplemented by you has been that there was an effort to reach certain people, both in Washington and in Arkansas, so that those people who knew and cared about Mr. Foster would not learn about his death by hearing it over the airwaves?

Mr. WATKINS. That's correct.

Mr. BEN-VENISTE. Who are some of the people you were trying to reach that evening?

Mr. WATKINS. I recall specifically Mrs.—Vince Foster's sister's husband, Lee Bowman, in Little Rock, and also some—a minister, Presbyterian minister in Hope, Arkansas, and also a Mr. George Frazier in Hope, Arkansas.

Mr. BEN-VENISTE. Is it fair to say, then, that in order to get in contact with Ms. Thomasson, that it would have been easier for you if you had a phone number where she could be reached so that you could phone her because it might be very difficult to get through to you either on the Foster phone——

Mr. WATKINS. Right.

Mr. BEN-VENISTE. —or on the cell phone that was being passed around?

Mr. WATKINS. It makes—yes.

Mr. BEN-VENISTE. Therefore, does that refresh your recollection as to why you may have left a message on the pager that Ms. Thomasson ought to report with a phone number at whatever location she was at?

Mr. WATKINS. As I said earlier, I don't recall specifically, but it very well could have been the reason. The phone was awfully tied up. I didn't have a dependable phone, as far as my cellular phone, so it may very well have been the case.

Mr. BEN-VENISTE. Now, you weren't canvassing the countryside to find who was closest to the White House or who was furthest away or anything like that at the time?

Mr. WATKINS. No, sir. The only person I was interested in was Patsy.

Mr. BEN-VENISTE. You weren't standing there with a stopwatch trying to record who got back to you in what time?

Mr. WATKINS. No, not at all.

Mr. BEN-VENISTE. So that your recollections of the time intervals involved are, at best, an approximation.

Mr. WATKINS. Yes, and that's what I've said, I believe.

Mr. BEN-VENISTE. So, if we accept the electronic records that reflect that the pager message was left at 10:34 and that Ms. Thomasson entered the White House approximately 15 minutes later, would that do great violence to your understanding of what occurred that evening?

Mr. WATKINS. Not in general, no, no.

Mr. BEN-VENISTE. So she got back to you, you had the conversation, and she headed off to the White House arriving there within minutes.

Mr. WATKINS. Yes.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman. I wish to focus on any obstruction of justice that may have occurred during the White House's actions immediately following Mr. Foster's death. Now, I recognize that the Justice Department decided not to prosecute any White House officials for obstruction.

However, because the Department chooses to exercise its discretion to prosecute in this manner does not mean that there was no obstruction, that no Federal laws were violated. This is especially true in light of the information that has come forward today and last week that possible evidence in Mr. Foster's burn bag was destroyed, that Government officials searched Mr. Foster's office before Federal officials or Federal investigators could arrive, and that White House officials prevented Justice Department lawyers from searching Mr. Foster's papers.

This Committee, it seems to me, must explore whether there has been an effort to impede the enforcement of the law by White House officials.

Now, it's important that these hearings make clear the exact facts surrounding the events around Mr. Foster's death. But we must ask the White House officials who took these steps whether they sought to "influence, obstruct, or impede the due and proper administration of the law" by the Justice Department in violation of Federal obstruction of justice Statute 18, U.S.C. section 1505. We must also ask whether those who burned bags or searched Mr. Foster's office or excluded Federal investigators from the office were ordered, persuaded or misled into doing so by their superiors.

We must also ask whether those superiors may have ordered these actions with the intent: one, to withhold documents and records from the Justice Department; two, to "alter, destroy, mutilate

or conceal" these documents or other objects needed for the investigation; or, three, "to hinder, delay or prevent the communication to a law enforcement official of information relating to the commission or possible commission of a Federal offense" in violation of 18 U.S.C. section 1512.

Let me go first to you, Mr. Watkins, if I can.

Mr. WATKINS. Yes, sir.

Senator HATCH. At the time of Mr. Foster's death, you were the Director of Management and Administration in the White House; correct?

Mr. WATKINS. Yes, sir.

Senator HATCH. You are now employed in California, as I understand it?

Mr. WATKINS. Yes, sir.

Senator HATCH. You knew the Park Police officers were treating this death as a suicide; right?

Mr. WATKINS. Yes, Senator.

Senator HATCH. You knew the Park Police would probably be searching for a suicide note, correct, or at least you assumed that?

Mr. WATKINS. Yes, and on my ride over to the Foster house I was notified that there was not one—or learned that there was not one at the death scene.

Senator HATCH. Now, Mr. Watkins, you ordered Patsy Thomasson to search Mr. Foster's office for a note, that's right, isn't it?

Mr. WATKINS. I did.

Senator HATCH. Did anyone tell you or suggest to you that you order Ms. Thomasson to do so or that you, through any means, should try to find any suicide note or other materials?

Mr. WATKINS. As I have stated earlier, there was general discussion at the house about a suicide note, and there was—we knew there was not one at the scene. There had—not one had been found at the scene. In looking for one at the house, there was not one at the house. I discussed it with Lisa Foster and Mr. McLarty.

Senator HATCH. Those were the only two you discussed it with?

Mr. WATKINS. As I recall. I don't recall specifically anyone else.

Senator HATCH. OK. Did you consider that your order or your request to Ms. Thomasson and the search by Ms. Thomasson might interfere with an investigation into Mr. Foster's death?

Mr. WATKINS. It never occurred to me, Senator.

Senator HATCH. But you never told the Park Police that you directed Ms. Thomasson to search for the note, isn't that right?

Mr. WATKINS. Consistent with what the Park Police said to Lisa Foster, like if you find anything or find a note, please let us know, that's what I would have done. I did not consider it to be anything other than my—our interests in helping the family find out why and to see if there was a note.

Senator HATCH. OK. It disturbs me, though—I'm disturbed by the fact that the White House was aware that the Park Police were looking for a note, but somehow you failed to tell the police that you sent Ms. Thomasson to search for the note.

Mr. WATKINS. It didn't occur to me, Senator, that—the fact of the matter is that the manner in which—and with no disrespect to the Park Police, but when—they were very casual about the request of

Mrs. Foster—to Mrs. Foster that if she found a note please, please let them know.

Senator HATCH. What's troubling to me is that not only did you authorize a search for the note, but, as we will hear in later testimony, Mr. Nussbaum failed to turn the note over to the Park Police for over 24 hours.

So some people are deducing that the White House wanted to clear the note before it was released. That's what's——

Mr. WATKINS. Senator, my only thought was to try to give an answer to why and to help Mrs. Foster. That was the only thought that occurred to me at all.

Senator HATCH. OK. Mr. Watkins, did you seal the office, Mr. Foster's office that is?

Mr. WATKINS. As I've stated earlier, I was not requested to seal the office.

Senator HATCH. You didn't tell Ms. Thomasson to seal it either, did you?

Mr. WATKINS. I did not.

Senator HATCH. In your deposition to this Committee you stated that you thought that the police would seal the office as part of their normal investigation, isn't that right?

Mr. WATKINS. I don't recall specifically, and I don't have that in front of me, but my recollection is that I said that if the police had wanted the office sealed, they'd been in contact for several hours with the Secret Service, they would have requested that of the Secret Service.

Senator HATCH. You didn't even dwell, then, on——

Mr. WATKINS. I never dwelt on sealing the office. It never entered my mind.

Senator HATCH. Did anyone suggest to you that the office did not need to be sealed?

Mr. WATKINS. I—no, I do not recall anyone saying that.

Senator HATCH. Ms. Mathews, in spite of the fact that you thought it was a good thing to preserve the trash that you talked about—the burn bag, in other words—you've told this Committee that you were ordered to burn Mr. Foster's burn bag by Bernie Nussbaum, is that correct?

Ms. MATHEWS. Just to clarify, the trash which was what was preserved and was put aside.

Senator HATCH. But the burn bag——

Ms. MATHEWS. The burn bag—when we found out the information that there was not—I was told there was not a burn bag in Vince Foster's office. That was the time I was told to process it as we normally process burn bags.

Senator HATCH. But you saw references on the bag that it was from Mr. Foster's office.

Ms. MATHEWS. Absolutely not. On the burn bag?

Senator HATCH. Yes.

Ms. MATHEWS. No, sir.

Senator HATCH. Was it the trash bag——

Ms. MATHEWS. No, sir. As I learned this morning, which I didn't know, I was told this morning that I think there was a Secret Service—I apologize because I don't remember specifically, but that there was——

The CHAIRMAN. You did very well, so don't worry. Go ahead.

Ms. MATHEWS. There was a Secret Service agent that said they had never dumped the burn bag from that office in any way. At no time did I have any indication that there were any documents at all from the Counsel's Office in the burn bag.

Senator HATCH. OK. Did it occur to you that this bag might contain some of Mr. Foster's papers or information from his office?

Ms. MATHEWS. When I first sought to get the bag, yes, sir, it did. But after the time at which I learned that he didn't have one in his office, one, and then it turns out that there wasn't—it wasn't ever dumped. So at the time when I learned it wasn't in the office, that's the point at which I thought my question wasn't quite so relevant.

Senator HATCH. But it was Mr. Nussbaum—and maybe I've got this wrong, and correct me if I'm wrong—it was Mr. Nussbaum that told you to burn the burn bag, right?

Ms. MATHEWS. Yes, sir. What he told me was to process it appropriately. He told me two things: One, that there was not a burn bag in Vincent Foster's office and, two, that the materials, the commingled materials that I had, should be processed as they normally are processed.

Senator HATCH. Did you know exactly where the burn bag came from or is that unclear?

Ms. MATHEWS. The commingled bag that I received came from the uniformed division of the Secret Service.

Senator HATCH. OK. Now, let me just ask you this question: Did Mr. Nussbaum tell you or anyone else if anyone had wanted the burn bag destroyed?

Ms. MATHEWS. No, sir, he told me to process it as it's normally processed and it is my understanding, though I've never seen it actually happen, that that's what the Secret Service does.

Senator HATCH. I see. Did he tell you if he or anyone else had ordered Mr. Foster's office searched?

Ms. MATHEWS. No, sir, he did not mention that to me.

Senator HATCH. Were you aware of anybody being in Mr. Foster's office or searching it?

Ms. MATHEWS. No, sir, I was not aware of that.

Senator HATCH. OK. Mr. Gearan, on December 23, 1993, you stated, and I quote, "the President today has instructed his personal attorney"—I assume that's Mr. Kendall—"to provide appropriate law enforcement authorities at the Department of Justice with all the documents relating to the Whitewater Development Corporation"—could I just finish this question—"including those in the files of Vincent Foster which were turned over to their personal attorney after Mr. Foster's death." That was in The New York Times.

Now, I want to make sure that this Committee and the American people know about all of the documents relating to Whitewater. So, Mr. Gearan, can you state for the record that the documents in the hands of David Kendall and the documents still in the hands of the White House are all of the documents relative to the Whitewater investigation?

Mr. GEARAN. Based on my understanding, yes, sir, the statement we issued in December is correct.

Senator HATCH. When you made that statement that was reported in The New York Times, were you referring to all of the documents we've become aware of so far?

Mr. GEARAN. Senator, I'm not sure of all the documents that you have become aware of, but based on my understanding in December—and there is no distinction today as I testify before you. My understanding is that that includes all of the documents.

Senator HATCH. OK. I assume this group of documents included those that the Presidential campaign had collected and those transferred from the White House to Mr. Kendall's office. Do you know?

Mr. GEARAN. Senator, what I know is that the documents were in Mr. Kendall's office. The chain of custody from the campaign, I am uncertain about.

Senator HATCH. OK. Thanks.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I'm going to yield to Senator Simon, but I want to just be clear of one thing with Ms. Mathews because I'm a little concerned by some of the line of questioning that's been put to her and some of the reports that were in the press which seem to me to actually be very much at variance with what she did, and I want to be clear about this.

At the time that they proceeded to process the burn bag in the normal course, I take it that it was your view there were no documents in the burn bag from Vince Foster's office; is that correct?

Ms. MATHEWS. Yes, sir, I understood there to be no documents from Vincent Foster's office in that bag.

Senator SARBANES. So you weren't proceeding to process the burn bag and the burning of those documents on the basis that there were documents in there from Foster's office? In fact, just to the contrary, you'd been told or led to understand that there were no documents in the burn bag from Foster's office; is that correct?

Ms. MATHEWS. That's correct.

Senator SARBANES. So what you recovered was the trash bag, and you identified that and then left it in the office there; correct?

Ms. MATHEWS. Yes, sir, the trash bag was maintained.

Senator SARBANES. You started also to recover the burn bag and then were told there's no burn bag in his office, therefore leading to the conclusion there were no documents in the burn bag from Foster's office, and at that point the burn bag which was for the entire West Wing was processed?

Ms. MATHEWS. Yes, sir.

Senator SARBANES. Not by you, it just simply went ahead in the normal course of business; is that correct?

Ms. MATHEWS. Yes, sir, the uniformed division doing its normal processing.

Senator SARBANES. That they normally would do?

Ms. MATHEWS. Yes, sir.

Senator SARBANES. Senator Simon.

Senator SIMON. Thank you, Senator Sarbanes.

Mr. Gearan, you were known—I shouldn't say were known—you are known as somebody who deals straight with the press and everyone and I think that's probably why you've been nominated to head the Peace Corps. For a while you worked for one of the finest

Members, most honest Members of Congress, Congressman Berkley Bedell.

When you were up here you occasionally saw turf battles here on Capitol Hill. You know those things exist. One of the things that we may be talking about between the Justice Department and the White House and the Park Police and the Secret Service is something of a turf battle.

Is that an inappropriate characterization of what—I'm not saying that this is responsible for everything, some mistakes were obviously made—but different people were trying to say this is our jurisdiction, you ought to stay out. Is that in part what happened?

Mr. GEARAN. Senator, in the immediate aftermath of Vince Foster's death, there were questions about the relevant jurisdiction for the various law enforcement authorities that were involved because of the venue of his death, the position he held, and the nature of the investigation. There were many different law enforcement authorities involved and that's why we sought the guidance from the Department of Justice as to how it would be referred to and how the investigation was going to be conducted, yes, sir.

Senator SIMON. But just to further that, and I don't mean this disrespectfully, everyone wants to do his or her job and there was a question about who takes charge here, White House Counsel, Justice Department and so forth. Here's an area where the lines are not clear. Is that a safe characterization?

Mr. GEARAN. Senator, I think certainly in the immediate days after Vince Foster's death, there was a fair amount of confusion as to the appropriate—how it would be referred to as who the—who is in charge of the investigation. One of the purposes of a call to the Justice Department was to describe that, and it was indicated that the point of contact for this investigation would be the Justice Department.

Senator SIMON. Now, some people are trying to make something out of the delay on the notification of the note. First, my own reading of the note is that there was nothing there for any specific cause of delay, in terms of any political reason, but you testified in your deposition that one of the reasons for the delay was that Mrs. Foster was not in Washington and was going to be returning to Washington; is that correct?

Mr. GEARAN. That's correct, Senator. By the time that I was informed of the note, it had already been turned over to the Justice Department and to the Park Police. But my understanding is there was both the issue of the President's travel schedule that day as well as Mrs. Foster being in transit from Arkansas, I believe, to Washington that allowed for the lapse of time before it was turned over to the Attorney General and the Park Police.

Senator SIMON. Ms. Mathews, on the trash, did you throw any of it away once it was recovered?

Ms. MATHEWS. The only thing I threw away was the creamer that was half full in the bottom of the bag and was leaking so I did get rid of that. Everything else remained in the bag.

Senator SIMON. But you threw nothing away that had any words or anything on it written by Vince Foster?

Ms. MATHEWS. No, sir.

Senator SIMON. Did anyone suggest that you ought to throw anything away?

Ms. MATHEWS. No, sir, no one made any suggestions.

Senator SIMON. Mr. Watkins.

Mr. WATKINS. Yes, sir.

Senator SIMON. When you got a hold of Patsy Thomasson on the phone, did you ask her to remove any documents from Vince Foster's office?

Mr. WATKINS. I did not, Senator. I informed her, advised her of Vince's death and I asked her to go to his office and look for a note, a suicide note.

Senator SIMON. Now, the next morning there was a briefing in your office where Bernie Nussbaum and others were there together with the Park Police. After that briefing finished, and I assume the Park Police have left, and you're there with other White House officials, did anyone suggest to Bernie Nussbaum or anyone that some documents should be removed from his office?

Mr. WATKINS. No, sir.

Senator SIMON. By implication some people are suggesting that in some way you were trying to obstruct justice as you moved along. How would you respond to that kind of a charge?

Mr. WATKINS. Absolutely not, Senator. My only reason for calling—for asking Patsy to look for a note was to try to give an explanation as to why Vince might have done this, this thing.

Senator SIMON. At that point you and others were not thinking about a Senate hearing 2 years from now or even press reaction, it was you were just stunned by the death of your friend.

Mr. WATKINS. Everyone was stunned all evening. The most asked question at the home, my most asked question just with my wife riding back from a movie—we were at a movie when I was notified—was why, why. Anything to try to get an answer to that question is what I was trying to do.

Senator SIMON. All right. I thank you. I yield.

Senator SARBANES. Mr. Chairman, in the remaining time of Senator Simon, I'd like to put a couple questions, first to Ms. Mathews.

Senator Simon asked you whether anyone suggested to you that you throw away any of this material that night and you said no one had suggested that. In fact, to the contrary, people told you it was a good idea for you to rescue this material, did they not?

Ms. MATHEWS. That's correct, I was encouraged to go get the trash.

Senator SARBANES. As I recall, you asked someone about it and raised the point and they said that's a good idea, you should go do that, or maybe after you did it, they said it was a good job?

Ms. MATHEWS. Yes, sir, before I did it, I raised the point should I go and get the trash to senior staff members who were around at the time and they agreed that that was a good idea and I should pursue that.

Senator SARBANES. Now, I'd like to put up that pager message that Mr. Chertoff used earlier.

Mr. Watkins, are you focusing on that there?

Mr. WATKINS. Yes.

Senator SARBANES. The first question I have is a technical question that I'd be happy to ask of staff, but the word "number" seems

to be a continuation of the beeper message so that it was as though the beeper message said "Please page David Watkins with your location." Now, "number" then appears on the next line and in the beeper message they may have ran out of space on the top line to include it. If that's part of the message, then the message would read "Please page David Watkins with your location number." I take it location and number—but number, I take it, referring to the phone number. Can staff inform me whether number is part of the beeper message?

Let me look at 000653. There we see "Please call signal for a call from the Chief of" and then "Staff" appears on the next line. Then the next line after that is deleted by pager which is exactly the way the message to Mr. Watkins read. The same thing happens to the next message right on that document, "Please call signal switchboard for call holding with" and then it goes down and the next line reads "Dee Dee Myers."

Michael, you pursued this, do you have a view on this? I want to make sure I get this accurate. But it would be my understanding, on the basis of this, that the word number in this message you showed to Mr. Watkins on his pager was part of the message.

Mr. CHERTOFF. I think that's probably right. I mean, I'm judging from the inference that's being drawn. I think that's probably correct.

Senator SARBANES. OK. Then that, of course, would make your recollection even more consistent with what was quoted from Patsy Thomasson's deposition to you in the earlier questioning when Patsy Thomasson said, "After I had dinner at Sequoia, my pager went off. When I went in, the pager said call David Watkins through the White House switchboard. Called the switchboard and asked to talk to Mr. Watkins and she said give me your number, he wants to call you back. I said I'm at a pay phone, why don't you just let me hold. So I held until she could get Mr. Watkins back on the telephone for me."

So I think all of that then is more consistent with the testimony we've heard and, also, the pager message becomes consistent with the testimony that we've heard.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. In reviewing your depositions, Mr. Watkins, you indicate that you don't remember any discussion on securing the office——

Mr. WATKINS. That's correct, Senator.

Senator MURKOWSKI. —as made reference to by Sergeant Cheryl Braun.

When you rode out to the Foster residence, who else was in the Park Police car?

Mr. WATKINS. Officer Braun and Officer Rolla.

Senator MURKOWSKI. Major Hines was not in the automobile at that time?

Mr. WATKINS. No, sir.

Senator MURKOWSKI. Your wife was not with you; is that correct, she was following?

Mr. WATKINS. That's correct.

Senator MURKOWSKI. How did you get home? Where did you go after you left the Foster residence?

Mr. WATKINS. I went home to my home.

Senator MURKOWSKI. How did you get home?

Mr. WATKINS. I went with my—as I recall, I went with my wife in the car.

Senator MURKOWSKI. OK. You did not go with the Park Police, they simply picked you up.

Mr. WATKINS. Yes, that's correct.

Senator MURKOWSKI. I believe at the Foster home you indicated that you talked to Patsy Thomasson and told her to look for a note. Have you conversed with her since as to where she looked specifically? Did you have any knowledge if she looked in the briefcase?

Mr. WATKINS. No, I—when she called me back, she said David, I've looked for a note. There is no note, and I accepted that.

Senator MURKOWSKI. Since that time, and in view of the fact that the torn-up note was later found in the briefcase, have you had occasion to talk to her about the fact that they found the note in the briefcase or anything relative to the note being found and the realization that she had assured you she didn't find a note when she looked?

Mr. WATKINS. I don't recall having any conversation with Patsy after that about a note.

Senator MURKOWSKI. About the note or the finding of the note?

Mr. WATKINS. No, sir.

Senator MURKOWSKI. Do you have any explanation as to why Sergeant Braun would recall quite vividly the fact that she had asked you to seal Foster's office and your response that you don't remember that conversation?

Mr. WATKINS. Senator, my response would be that if this city has to try to find that someone is lying about it, then that's one thing. But as I've stated repeatedly today, I'm not saying Officer Braun doesn't believe she said that. I'm saying if she said it, I did not hear it. Had I heard it, I would have taken action. That's what I do. That's what my job was.

I would have done one of three things: I would have notified the Chief of Staff, who was there, I would have notified the Counsel's Office, or would have said let's talk to the Secret Service. I do not recall Officer Braun making any request of me to lock or seal the office.

Senator MURKOWSKI. Recognizing the circumstances, and hindsight, of course, is cheap, but in your opinion, should the office have been sealed? You indicated that you had responsibility as Assistant to the President for Management Administration.

Mr. WATKINS. Senator, at the time the concern was to find—to determine the why of Vince doing that. The Park Police had been in constant contact or had been in contact for over 5—for about 5 hours with the Secret Service, and had there been, had they felt there was a compelling need to do that, I assume they would have requested that. I didn't think it was my responsibility. It never occurred to me that it was my responsibility to have the office sealed.

Senator MURKOWSKI. When you went back to the office the next day, you had access to Foster's office the next day?

Mr. WATKINS. I did? No, sir.

Senator MURKOWSKI. So you did not go into Foster's office.

Mr. WATKINS. No.

Senator MURKOWSKI. At all?

Mr. WATKINS. No, sir.

Senator MURKOWSKI. Mr. Gearan, I'm going to refer to notes that you indicated to the Committee you took with regard to the phone call from Phil Heymann. I think that was—I'm not sure of the notation here as to just when that occurred, but it's been made reference to by the Committee previously and it bears 11:45, 7/29 on the top. It's your notes regarding the Phil Heymann phone call.

I'd ask that perhaps the witness be provided with those notes. Have you got them there?

Mr. GEARAN. Senator, this is the phone call made at 11:45 on July 29th.

Senator MURKOWSKI. That's the one. 11:45, July 29.

Mr. GEARAN. Yes, I have that.

Senator MURKOWSKI. At the bottom of the page, there's a reference that reads as follows: "There's a sense from Park Police and including Phil," that would be Phil Heymann, "and Department of Justice and probably the Washington field office, that too much of the investigation inquiry before, when, after was exercised by the White House and those too close to Vince." Then there's a notation, "suspicions extremely dangerous, do everything in your power to quiet suspicion." Then further, "I've had heated discussions on the way the documents were handled." I'm not sure—"review," I guess, "Janet Reno." Then the last page of those, page 4 of this note, under the reference "PH," Phil Heymann, "d-o-c," documents, "have been distributed over my objections."

Are these the same documents in each case referred to on page 2 with your interpretation I've had heated discussions by the way the documents were handled and then it says Bernie and, recognizing these are Heymann's comments, do you have any reason to believe that that reference to documents is the same as the reference at the conclusion of page 4? Do you know what documents Mr. Heymann was referring to specifically?

Senator SARBANES. Mr. Chairman, would Senator Murkowski yield for a question?

Senator MURKOWSKI. Sure.

Senator SARBANES. Is this the same note that Senator Shelby questioned about extensively this morning?

The CHAIRMAN. Yes.

Senator SARBANES. It is the same?

The CHAIRMAN. They are the same notes.

Senator MURKOWSKI. If I may respond, my questions are specific to the documents themselves as to, see——

Senator SARBANES. I wasn't suggesting that it was in some way inappropriate not to ask further questions about it. I just wanted to be clear that it was the same set of notes.

The CHAIRMAN. Yes, it is.

Mr. GEARAN. Senator, this is a conversation that I had with David Gergen to Phil Heymann relative to seeking guidance from him on what the White House should say that day or in the days that followed about the contents of the note that was found in Mr.

Foster's briefcase. We sought their guidance about what we should say to the press.

In the instance that you refer to, on page 4, my reading of these notes is that Mr. Heymann was saying that the documents, meaning the note itself, had been distributed over my objections. At the top of that——

Senator MURKOWSKI. The documents vis-a-vis the note itself?

Mr. GEARAN. Senator, elsewhere in my notes here it's referred to in the plural. I suspect because the note, as you know, at that point was many different pieces, as you can see on page 3 under Mr. Heymann's conversation at the bottom, it says "it's better if you avoid any statements other than you turned them over." "Them" being, of course, the many pieces of paper that the note was torn into.

Senator MURKOWSKI. The 27 pieces of paper, is that what you are referring to?

Mr. GEARAN. If that's the—yes, sir.

Senator MURKOWSKI. Well——

Mr. GEARAN. So to answer your question, if I may, this last statement on page 4, "documents have been distributed over my objection," I think can be read following up on the comment he made at the beginning of page 4, "I learned that FBI field office was informed of the document."

The recollection that I have of that conversation was that there was a fairly high level of concern that this note would be released, the contents of it, because of the wide dissemination of this, at least the contents of the note. I think that's what he's referring to at the top of page 4. He again references it at the end of our conversation.

Senator MURKOWSKI. Mr. Chairman, if I may just refer to page 2 again and draw a parallel to the conclusion of page 4. "I had heated discussions on the way docs," d-o-c; "were handled," that was on page 2, "Bernie," which would differentiate between how, for example, a note were handled. I also would refer to the conclusion of page 4 where again "docs," the implication being documents as opposed to a note, but I just wanted to point that out for the record relative to the fact that we have your opinion relative to the identification of the documents being limited to the pieces of paper in the note, the suicide note; is that correct?

Mr. GEARAN. Mr. Chairman, if I might——

The CHAIRMAN. Let me at this point say—and I'm going to give you an opportunity to respond, and I'm going to accept your recollection at this time, but I think it's pretty difficult to square it up when you refer to the note in particular. I think that's what Senator Murkowski is pointing to on page 2 as opposed to documents, and I think Senator Shelby touched on that earlier. I think clearly it leads us to believe that these are two different—at least some of us, to believe that these are two different instruments.

Now, I'm not questioning what your recollection is. You are trying to recall back, but I have to tell you—and we will get to this obviously because we will speak to Mr. Gergen and we will speak to Mr. Heymann, so I don't think we should press on any further—but I think it's reasonable to believe that there was a discussion by Mr. Heymann as it relates to the documents and the handling

of them in the handling of the entire matter, not just the note. If you read all of your notes in context I think that comes through. At least I see that. It's rather troubling to think that he was only talking about the note.

But I understand what your call was made for. The purpose of your call. I do not dispute that. The purpose of your call was to get guidance and that has been brought out and I think that you've testified to the best of your ability here. So I don't want to press on any further with that.

Senator, do you want to conclude?

Senator MURKOWSKI. I'm finished, Mr. Chairman. Thank you.

Mr. GEARAN. Mr. Chairman, if I might, just to make that point in summary. It's my recollection that the purpose of the call was to discuss the actual note itself——

The CHAIRMAN. Sure.

Mr. GEARAN. —not the files, not the search, but because it was already known by the public and the press that a note had been found, the contents of the note was of considerable interest. That was the purpose of this call and it's my recollection that that was the context of our discussion.

The CHAIRMAN. Let me just make a statement here. I don't think you are being fair to yourself, and maybe not even to the Committee, because on page 134 of your deposition you say:

> Heymann had heated discussions on the way the documents were handled with Bernie Nussbaum.
> *Question:* That's the review process with regard to the documents?
> *Answer:* That's how I would read that, yes.

So there was, it would appear, some discussion as it related to the overall handling of the documents as well as your inquiry with respect to the dissemination of the note. I just share that with you, that's at least what I get from it. In your deposition you acknowledge that; isn't that true?

Mr. GEARAN. Yes, Mr. Chairman. I've acknowledged it here as well. I think Mr. Heymann was expressing that concern as well.

The CHAIRMAN. In other words, Mr. Heymann did express a concern as it related to the handling of all of the documents as well as what should be done with the note; is that true?

Mr. GEARAN. He said that elsewhere in the notes, that he had had, quote, heated discussions.

The CHAIRMAN. OK. I just think it's important that we put that in the proper context.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. Yes.

Senator MURKOWSKI. In referring to page 2 of the notes——

The CHAIRMAN. Senator, I'll come right back to you, but I really think because the Minority has been very, very patient——

Senator MURKOWSKI. Just let me make one very quick——

Senator SARBANES. Let's clarify this because I don't want Mr. Gearan to be——

Senator MURKOWSKI. I'll be very brief, Mr. Chairman.

Senator SARBANES. I don't think we're trying to do that.

Senator MURKOWSKI. I'll be very brief. As I read the communication of the notes of the Heymann call on page 2, "I've had heated discussions on the way docs were handled, Bernie." That implies

past tense as opposed to the note which is, in effect, a current in the sense of a tense. So that's why it's confusing to me as I read this and interpret documents specifically were handled as past tense, vis-a-vis note which had just been, I think, found because it was only held for what, 24 hours, so that's why I would read this to imply documents.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Gearan, do you want to elaborate on that?

Mr. GEARAN. Senator, I've tried to testify to the best of my recollection as well as summarizing my notes. I guess my only, my point was this was a discussion seeking guidance from the Justice Department on how we should talk about this note. This is how we would answer press questions.

Senator SARBANES. It's not inconsistent with such a discussion for Heymann to express the view that he had had heated discussions with Bernie on how the documents were handled, we know that was the case.

Mr. GEARAN. No, and I think the general context of the discussion was that we should not do anything that would raise any suspicions on the part of anyone, and that's, indeed, why we were seeking the Justice Department guidance on this, so obviously we followed his advice.

Senator SARBANES. This actually was an effort on your part to make sure everything was done in as an appropriate a fashion as was possible?

Mr. GEARAN. Yes, Senator.

Senator SARBANES. Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman. I just want to clear up some of your statements, Ms. Mathews, and sum up your testimony this morning. I want to make sure I understood you correctly.

Is it correct that you, on your own initiative, arranged to have the trash bag from Foster's office retrieved and preserved; is that correct?

Ms. MATHEWS. Yes, it was my own initiative and then I confirmed the idea with the senior staff people who were around.

Senator MURRAY. They told you that that was a good idea; is that correct?

Ms. MATHEWS. Yes, ma'am.

Senator MURRAY. Your intention was to preserve evidence; correct?

Ms. MATHEWS. Yes, and to see if there was a note.

Senator MURRAY. It was also on your own initiative that you asked for the burn bag material to be retrieved. That was your own initiative as well?

Ms. MATHEWS. Yes. I again asked and was told initially that it was a good idea.

Senator MURRAY. It was to preserve evidence; correct?

Ms. MATHEWS. To see if there was a note.

Senator MURRAY. I also understood you to say that you stopped looking through the commingled burn bag for two reasons: because you learned that Foster had no burn bag in his office, and because you learned that the commingled burn bag contained sensitive, classified material from the West Wing; is that correct?

Ms. MATHEWS. Yes, I stopped looking because of the sensitivity. We put the bag away after we found out about the Vincent Foster part, that there wasn't one in his office.

Senator MURRAY. Thank you. I wanted to clarify that.

Mr. Watkins, it was my understanding you described the general scene of the Foster family home as one of chaos; is that correct?

Mr. WATKINS. It was, it was one of great confusion, yes, Senator.

Senator MURRAY. It's not surprising in that kind of a situation.

Mr. WATKINS. No.

Senator MURRAY. Was it your perception that Mrs. Foster was very anxious to find a note explaining what her husband's state of mind was?

Mr. WATKINS. Mrs. Foster was interested in getting an explanation of why, and a note, we thought, might have done that.

Senator MURRAY. Were other people expressing that same feeling, that a note may explain the unexplainable?

Mr. WATKINS. Yes, there was some general discussion about a note.

Senator MURRAY. Would you have supported efforts to get to the bottom of the reasons for Mr. Foster's suicide?

Mr. WATKINS. I'm sorry?

Senator MURRAY. Were you looking for a way to get to the bottom of Mr. Foster's suicide?

Mr. WATKINS. Yes.

Senator MURRAY. You too were looking for——

Mr. WATKINS. Yes, my personal question to myself was why, why did Vince do this.

Senator MURRAY. Did you have any reason to impede an investigation into his suicide?

Mr. WATKINS. Absolutely none.

Senator MURRAY. Did you have any reason to stop police officers from searching for a note?

Mr. WATKINS. Absolutely none.

Senator MURRAY. Wouldn't you say that the opposite is the case, that you would have been all relieved to find a note at that point?

Mr. WATKINS. Yes.

Senator MURRAY. Thank you. One other thing. When you spoke with Patsy Thomasson, did you ever discuss files in Vince's office?

Mr. WATKINS. I did not.

Senator MURRAY. Did you know what was in his files in his office, by any chance?

Mr. WATKINS. No, I had no idea.

Senator MURRAY. None to your knowledge.

Mr. WATKINS. No.

Senator MURRAY. Thank you, Mr. Chairman. I'll yield back my time.

Senator SARBANES. Senator Dodd.

Senator DODD. Just very briefly, Mr. Chairman, because I know we want to move on, I think, to the next panel of witnesses. Let

me thank all three of you for your testimony here today, and I would just say to all three of you that we've obviously heard a lot of characterizations and of how these events or actions were carried out. Some have talked about it as late night searches and rummaging around, uncontrolled rummaging and so forth, and to hide materials and the like.

The heart of the question, I guess, for all of us here, is obviously was there any obstruction? Were there people trying to hide or conceal the materials or destroy materials that would otherwise be relevant to this Committee?

So I am not going to go into any more excruciating detail of minute by minute here. I think we've explored that pretty thoroughly here today and with your depositions, but I have asked our previous witnesses, those who are pertinent to this, the question I'm going to ask each and every one of you, and I'll ask you to respond to this. Obviously you are all sworn witnesses, and you took the oath when you came in here this morning.

Let me start with you, Mr. Gearan, if I can, with the four basic questions that I'm going to ask of every single person who comes before this Committee who were involved or potentially involved with this issue that is the subject of this set of hearings. Now, my colleagues have already raised some of them, but I want to tighten them right down here if I can.

I want to know on or after July 20, 1993, which is the date of Vincent Foster's suicide, did anyone ask you or instruct you to destroy any documents from Vincent Foster's office?

Mr. GEARAN. No, Senator.

Senator DODD. On or after July 20, 1993, did you destroy, yourself, any documents from Vincent Foster's office?

Mr. GEARAN. No, Senator.

Senator DODD. On or after July 20, 1993, did anyone ask you or instruct you to conceal from law enforcement officials any documents from Vincent Foster's office?

Mr. GEARAN. No, Senator.

Senator DODD. Did anyone at any time ask you or instruct you to take any action to impede, obstruct, or otherwise interfere with law enforcement's investigation into Vincent Foster's suicide?

Mr. GEARAN. No, Senator.

Senator DODD. Ms. Mathews, I'm going to ask you the same set of four questions. On or after July 20, 1993, Vincent Foster's death, did anyone ask you or instruct you to destroy any documents from Vincent Foster's office?

Ms. MATHEWS. No, sir.

Senator DODD. Did you destroy any documents from Vincent Foster's office?

Ms. MATHEWS. No, sir.

Senator DODD. Did anyone ask you or instruct you to conceal from law enforcement officials any documents from Vincent Foster's office?

Ms. MATHEWS. No, sir.

Senator DODD. Did anyone at any time ask you or instruct you to impede, obstruct, or otherwise interfere with law enforcement's investigation of Vincent Foster's suicide?

Ms. MATHEWS. No, sir.

Senator DODD. Finally, Mr. Watkins, the very same questions. Did anyone ask you or instruct you to destroy any documents from Vincent Foster's office?

Mr. WATKINS. No, Senator.

Senator DODD. Did you destroy any documents from Vincent Foster's office?

Mr. WATKINS. No, Senator.

Senator DODD. Did anyone ask you or instruct you to conceal from law enforcement officials any documents from Vincent Foster's office?

Mr. WATKINS. No, Senator.

Senator DODD. Last, at any time did anyone ask you or instruct you to take any action to impede, obstruct, or interfere with law enforcement's investigation of the suicide of Vincent Foster?

Mr. WATKINS. No, Senator.

Senator DODD. I thank you, Mr. Chairman. I thank you.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Watkins, earlier you told us that you did not know whether Ms. Thomasson had a security clearance as of July 20, 1993. But in your deposition you stated, "whether she had a security clearance, I don't believe she did." You also said that you knew generally that she had worked for Dan Lasater.

Mr. Watkins, what I'm asking you is, did you believe that Ms. Thomasson was not getting a security clearance because of her 10 years' association with Mr. Lasater who is a convicted drug dealer?

Mr. WATKINS. Senator, I believe my testimony this morning was that I did not have confidence whether Ms. Thomasson had a security clearance or not at that time. Absolutely not. The only reason for her lack of a security clearance was the processing.

Senator FAIRCLOTH. You don't think her association for 10 years with a man who was a convicted drug dealer may have raised any suspicion with the FBI?

Mr. WATKINS. I do not.

Senator FAIRCLOTH. Have you dealt with the FBI very much?

Mr. WATKINS. I also went through an extensive security clearance process myself, Senator.

Senator FAIRCLOTH. According to Business Week, Hillary Clinton invested $2,000 in a cellular telephone business and turned a profit rather quickly of $46,000. We now know Vince Foster was working on the tax returns of the Clintons, at the time of his death.

Was Mr. Foster working on any item relating to Arkansas Cellular and Hillary Clinton's $46,000 profit?

Senator SARBANES. Mr. Chairman, this once again is clearly outside the scope of what's in the resolution.

Senator FAIRCLOTH. It is within the scope.

Senator SARBANES. It certainly is not.

The CHAIRMAN. I'm going to let Mr. Watkins answer it. I think the question is whether or not he was aware of any tax work that Mr. Foster would have been doing with respect to that particular transaction. He can answer yes or no and that will be it.

Senator FAIRCLOTH. The relevance, Mr. Chairman, is that it could explain why Watkins ordered Patsy Thomasson to go to Vince

Foster's office that night. It may have been to remove documents relating to the deal.

Senator SARBANES. Most anything would explain that, Senator. It's not within the scope to look within Arkansas Cellular.

The CHAIRMAN. Just for the purpose of ascertaining whether Mr. Watkins had any knowledge or not, as it relates to whether there may have been documents there, I'm going to allow it, but just for that purpose.

Mr. Watkins, did you have any knowledge of that?

Mr. WATKINS. I'm confused as to what the question is.

The CHAIRMAN. Whether there was a question with respect to taxes on that particular transaction?

Mr. WATKINS. No.

The CHAIRMAN. You had no knowledge of that?

Mr. WATKINS. No, that transaction was completed in 1987.

The CHAIRMAN. So the chances are that there would be no tax treatment you know of that would have been open in 1992?

Mr. WATKINS. That's correct.

The CHAIRMAN. All right. That's all.

Senator FAIRCLOTH. It was completed in 1987, so it would not have been. That's the answer I was trying to get.

OK. Patsy Thomasson delivered to you at the Foster home a copy of a press statement on Mr. Foster's death; the night of the suicide, she delivered a press release to you at the house; is that right?

Mr. WATKINS. I believe she did, yes.

Senator FAIRCLOTH. You believe? You don't remember whether she did or not? I believe you'd remember that, wouldn't you?

Mr. WATKINS. It is my recollection that she did deliver to me a press statement from the White House Communications Office.

Senator FAIRCLOTH. Now, this is important. Did she deliver anything else to you, any other document that night other than a press release?

Mr. WATKINS. No, sir.

Senator FAIRCLOTH. That's all?

Mr. WATKINS. That's all.

Senator FAIRCLOTH. All right. I thank you.

The CHAIRMAN. In the time remaining I'm going to just—Mr. Watkins, I understand it was a very difficult, confusing time, and I understand you arrived at the house, Vincent Foster's house—terrible calamity, you knew Mrs. Foster, you knew Vince, you knew the people there. Even the officers weren't quite certain as to the time that they arrived, in the area maybe of between 10 p.m. and 10:30. There comes a time, apparently at 10:34, when you notify Patsy Thomasson of Vince's death. The pager showed 10:34. When you testified to this, you said the only reason was to ask Patsy to look for a note, was to look for a motive.

But you said when you initially called her you just wanted to let her know, inform her of Vince's death, and I believe that you did. That would be natural. But you then said let me know where you are which would lead some people to believe that not only did you want to bring this to her attention, but that you also wanted to see if she was in the position—and I think reasonably so—to go to the White House and to go to his office to look for a note, because you said everybody was troubled about what was the motive.

Now, is that a fair statement?

Mr. WATKINS. Yes, sir, that's a fair statement. Yes, sir.

The CHAIRMAN. I am not going to ask you any other questions, but, you see, some Members become concerned when you say—you seem to be saying I wanted to let her know and then there was a period of time and I heard people talking about——

Mr. WATKINS. No, that's what I—I misunderstood what you said then. My recollection is that I beeped Patsy to notify her of Vince's death. When she—when we talked—in the time between beeping her and talking to her there was general discussion about a note. I told her, advised her of Vince's death when I did talk to her and, at that time, asked her to go to his office and look for a note.

The CHAIRMAN. OK. All right.

Mr. WATKINS. That's what I——

The CHAIRMAN. You have to understand, between the time you sent out the beep and by the time she returned the page, you had your conversation. She took a cab and went from Georgetown to the White House all within a period of 15 minutes. So I'd have to suggest to you it does not sound as if there was a long period of time after the initial communication. It almost sounds like you reached out to her to tell her he died and to get on over to check and see if there's a note. I don't find anything wrong with that. Again, it's a hectic night, but that's the way the fact pattern appears at least to me.

Yes, Senator Dodd.

Senator DODD. I was struck by that too, the time sequence. Clear this up for me because I think last night going over the transcripts, the way I understood it, Ms. Thomasson was leaving the restaurant when the beep came in, she wasn't in the middle of a meal. I was struck by her necessarily urgently running down. But as I went over that—and someone can correct me if I'm wrong—but as I am trying to recollect the reading last evening, she was actually on the way out of the restaurant when the message came, and made the call, told her friends what had happened and went. So while there may have been a sense of urgency even if she was in the middle of a meal, I was struck by the fact that she had completed the meal and was preparing to leave at the time——

The CHAIRMAN. I believe that to be the case.

Senator DODD. I was more satisfied myself, having raised the same question of the time sequence.

The CHAIRMAN. I think it's unfortunate and, of course, hindsight is very useful. People say why didn't you do X, Y, or Z. You don't think of all these things at the particular time, what the ramification is, that you'd be here 2 years from now. But certainly I think reasonable people would suggest that you might have told somebody whether it's Secret Service or the Park Police, what you had done. Did you tell anybody there, any of your colleagues, that you had asked Patsy Thomasson to look for this note?

Mr. WATKINS. I told Mr. McLarty.

The CHAIRMAN. OK. We have no further questions.

Senator SARBANES. Are we all finished here?

The CHAIRMAN. Does anybody else have any further questions of this witness? I want to thank the whole panel.

Senator SARBANES. As this panel departs I do want to make one point, in all fairness, particularly to Ms. Mathews and also to underscore the point I made earlier in the day about these leaks that are occurring and the danger connected with the leaks. One of the problems of the leaks is that the press gets inaccurate information. I mentioned earlier the Margolis memo that had the top of it apparently not present so it wasn't clear that these were simply moot court questions, and they were written as though they represented Mr. Margolis' own thinking.

This morning there was a story in the press which in effect said Sylvia Mathews said in a deposition that she was aware that some of the documents in the bag were from the Foster office and then went ahead and had that bag burned. Her testimony here has been very clear that that was not the case. She, in fact, just to the contrary, had the initiative to save the trash and, with respect to the burn bag, operated on the premise that there was no material in the burn bag out of Foster's office when it was then went ahead and processed.

Now, she was caught in a difficult situation. In fact, in this very same story, she declined comment yesterday pending the hearing which is, of course, what witnesses ought to do. But they're placed in an extremely difficult position obviously as a consequence of these leaks which in many instances are putting out erroneous information. Then, of course, in this instance she has to suffer with this until she gets here today and has the opportunity to really put her testimony out on the public record.

So I think we need to make a renewed effort to try to see what we can do about these leaks and let the story unfold here in front of the Committee. We've got plenty of Members and counsel that will question. We want to find out what happened. We want to lay it all out. But I would hope we could do it here in the public light in an orderly way, working together as we have tried to do. So I hope we can renew our efforts in this regard.

The CHAIRMAN. I assure the Ranking Member that I share this concern, and I say to the press—not that I believe it's going to do much good—that you really take this information—portions of depositions, for example—at your own peril because often it is erroneous or out of context, and that you can do great damage to the person.

I'm glad, Senator Sarbanes, that you took the time particularly to mention Sylvia Mathews. No one has told a clearer story and demonstrated greater concern than she has with regard to taking appropriate action and responded, given her position in the hierarchy, in a more exemplary fashion. If others had demonstrated her care and concern we wouldn't be here today. No doubt in my mind.

So, wait for it to fold out because sometimes you just—we're going to have a person there who can explain the circumstances of his or her arrival or their particular actions in such a way that you'd say, they did exactly what should have been done in that circumstance. I will say that her testimony was very convincing as it relates to that, not only convincing but clarifying, et cetera, and I think it indicated, even to the Committee, things that we heretofore had not known because she put it all together.

We do a great disservice if we just take some bit, some little piece, it may be titillating but, in the long run, it's going to lead us astray.

I want to thank all of the witnesses and we'll proceed to our next witness. Thank you.

The CHAIRMAN. Ms. Thomasson, would you stand.

Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Ms. THOMASSON. I do.

SWORN TESTIMONY OF PATSY L. THOMASSON
FORMER DIRECTOR OF THE OFFICE OF ADMINISTRATION AND SPECIAL ASSISTANT TO THE PRESIDENT

The CHAIRMAN. Ms. Thomasson, I don't know if you have a statement that you'd like to give to the Committee, or any remarks. We'd be happy to take any.

Ms. THOMASSON. Thank you, sir. My name is Patsy Thomasson. I was born in Arkansas. I grew up in a small town called Rison. I went to a small college, State supported, in Arkansas.

My first job after college was to work for former Congressman Wilbur Mills, who's now deceased. After a 2-year tenure on the Congressman's staff, I left to go to graduate school at the University of Missouri in Columbia.

After graduation in 1972, I returned to the staff of the Congressman in the district office in Little Rock. In 1977, then-Governor, now-Senator David Pryor appointed me to the Arkansas Highway Commission, Highway and Transportation Commission in the State of Arkansas for a 10-year term.

During the Clinton/Gore campaign and just before I joined the White House, I was Executive Director of the Democratic Party of Arkansas. I moved to Washington and joined the Clinton Administration on March 1, 1993. I was Director of the Office of Administration and Special Assistant to the President.

In May 1993, I became a Special Assistant to the President for Management and Administration, and my office was moved into the West Wing of the White House.

On July 20, 1993, I had dinner with a friend from Arkansas, her children, her sister and her sister's family. We ate at a restaurant at Washington Harbor. As we left the restaurant after dinner, I received a page from the White House operator telling me to page David Watkins with my location. I later learned from the pager records that that page happened at 10:34 p.m. on the night of July 20, 1993. I went into the restaurant and called from a pay phone. The White House operator asked me to give her a phone number so that Mr. Watkins could call me. I told her that I was at a pay phone and that I would prefer to hold while she got Mr. Watkins on the phone for me.

After a wait of several minutes, the operator connected Mr. Watkins and me. He told me at that time that Vince Foster had killed himself. I was in shock. I was in disbelief. I could not believe that my friend and colleague had killed himself. I asked Mr. Watkins at the time to repeat that message to me. I immediately asked David how I could help. He asked me to go to Vince's office to see

if Vince left a suicide note. He told me to page him after I looked and let him know what I found.

When I walked out of the restaurant, my friends were waiting for me. When my friend looked at me, she immediately asked me what happened. I said Vince Foster killed himself. She also knew Vince and his family from Little Rock. We were both in tears. We hugged each other. We consoled. It was a terrible moment. I had never personally known anyone before who had committed suicide. It was just totally unthinkable, inconceivable to me.

I told my friends I had to go to the White House to see if he left a note. My friend said you don't need to be by yourself, let me go with you. We then looked for a cab, got a cab, went up through Georgetown, M Street, to Pennsylvania Avenue and to the White House. I told my friend she couldn't go with me because it was too much trouble to clear her through the security process at the White House. They dropped me off at the northwest staff gate at the White House. I got out of the cab. She got out for a minute with me. We consoled each other.

I went into the White House, into my office on the lower level of the West Wing, unsecured my office, left my things, my purse in my office and went up to the first floor. I saw a number of people that I knew. I stopped to talk, to console and to be consoled. I saw Bernie Nussbaum. I told him that David Watkins had asked me to look in Vince's office for a suicide note. I asked him to go with me. We went to the White House Counsel's Office on the second floor. As we went into the reception area, the cleaning lady was coming out of Vince's office. Bernie and I went in.

As we entered, I looked on the surfaces of the furniture to see if I could see a note. There was nothing immediately apparent. My thought was if there was a note, Vince would have placed it so it would be easily found, but that it would not have been placed where it would not have been discovered fairly readily. I sat at Vince's desk, opened the drawers to the desk to see if there was anything that looked like a suicide note. I looked in the top of his briefcase, which was sitting on the floor. I didn't see anything.

During this timeframe, Bernie was grieving. He was walking back and forth in the office. He left the office for a few minutes. Shortly thereafter, I recall Maggie Williams came in and sat down opposite me. She was crying and visibly grieving. We sat together, me at Vince's desk, Maggie across from me, crying, and asking each other why.

As I recall, Maggie then left the office and Bernie came back. I believe that Bernie told me at the time we probably don't need to be here anymore, let's leave. I said OK. We both left the office emptyhanded. I went back to my office on the ground floor and paged David Watkins to report.

I later learned that the pager records show that the time of the page to Mr. Watkins was at 11:36 p.m. He responded. I reported that I had found no note. I asked if there was anything else that I could do to help. He told me that the Press Office was preparing a statement and the family wanted a copy of it. He asked if I would get that to the house. I delivered the press release to the home. I was at Vince's house for a few minutes, just long enough to express my condolences and then I went home for the evening.

Thank you, sir.

The CHAIRMAN. Thank you very much.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Thomasson, you are currently still working at the White House?

Ms. THOMASSON. Yes, sir, I am.

Mr. CHERTOFF. What's your current position?

Ms. THOMASSON. I am a Deputy Assistant to the President for Presidential Personnel.

Mr. CHERTOFF. When did you move over from your position as of 1993 into your current position?

Ms. THOMASSON. In May 1995.

Mr. CHERTOFF. Let me direct your attention back to July 20, 1993. You were at a restaurant called the Sequoia?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. That's in Georgetown?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. How far is that from the Foster residence?

Ms. THOMASSON. I have no idea.

Mr. CHERTOFF. Have you ever been to the Foster residence?

Ms. THOMASSON. Only one time, sir.

Mr. CHERTOFF. You did know Vincent Foster, though?

Ms. THOMASSON. I knew Vincent Foster, but I was only at his residence the night that he killed himself, and that was after I had been to the White House.

Mr. CHERTOFF. Do you remember where it is?

Ms. THOMASSON. I couldn't tell you, sir.

Mr. CHERTOFF. You do know it's in Georgetown, though?

Ms. THOMASSON. I think it's somewhere in Georgetown.

Mr. CHERTOFF. Now, you were in the process of leaving the restaurant when you got paged?

Ms. THOMASSON. That's correct, sir.

Mr. CHERTOFF. I take it you don't have an independent recollection of exactly what time you got paged; right?

Ms. THOMASSON. I have no independent recollection of that, sir.

Mr. CHERTOFF. But will you accept as accurate a record we received from the White House indicating that was at 10:34 p.m.?

Ms. THOMASSON. I have no better recollection than what the White House records would show, sir.

Mr. CHERTOFF. That is consistent with your general sense of things; right?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. Now, you get the page, and you go tell your friends you have to go respond; correct?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. You leave them outside the restaurant while you go back in?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. You go to a pay phone?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. You make a call back to the White House?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. The White House does not put you through immediately; correct?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. They tell you that there's a message for you and Mr. Watkins wants your location and a number; correct?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. You indicate, rather than leave, that you want to stay on; right?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. They then place the call, and it gets through to Mr. Watkins; correct?

Ms. THOMASSON. I don't know what they do on their end, sir. I know I was eventually connected with Mr. Watkins.

Mr. CHERTOFF. You're holding on the pay phone?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. He gets on the line and he breaks the news to you?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. At that point, you asked him if you could, in fact, come over to the Foster's residence; right?

Ms. THOMASSON. I asked if there was anything that I could do to help.

Mr. CHERTOFF. You said can I come where you are?

Ms. THOMASSON. I said is there anything I can do to help? Do I need to be where you are? What do I need to do?

Mr. CHERTOFF. His immediate response was I'd like you to go to the White House and look for a note?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. What did he tell you about what you should do if you found a note?

Ms. THOMASSON. I was to call him, sir.

Mr. CHERTOFF. You were going to page him and let him know you found the note?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Did he tell you not to touch it?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did he tell you to contact anybody at the White House when you arrived, before you went into Mr. Foster's office?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did he tell you to get in touch with Mr. Nussbaum?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did he tell you to get in touch with Secret Service?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did you have any discussion with him about how you would gain entry into Mr. Foster's office?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. You understood Mr. Foster's office was part of the suite occupied by the White House Counsel; correct?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. From your job duties at that time, were you aware that that suite was typically locked at the end of the day?

Ms. THOMASSON. I was aware that most offices in the White House would be locked at the end of the day.

Mr. CHERTOFF. That was certainly true of your office?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. Did your office have an alarm?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. Did you know that night on your way to the White House whether the White House Counsel's suite had an alarm?

Ms. THOMASSON. I did not know.

Mr. CHERTOFF. How long was your conversation with Mr. Watkins on the telephone, approximately?

Ms. THOMASSON. I couldn't tell you. It was a very short conversation.

Mr. CHERTOFF. You hang up the phone; right?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. You go outside to your friends?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. You tell them the news?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. You spend a moment or two commiserating?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. You say you need to go to the White House?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. They agree to come with you in a cab?

Ms. THOMASSON. They insist they come with me in a cab, yes.

Mr. CHERTOFF. You hail a cab?

Ms. THOMASSON. Yes.

Mr. CHERTOFF. Do you remember whether you hailed a cab outside the restaurant or whether you walked up to M Street?

Ms. THOMASSON. I don't really recall whether there was a cab down on K Street that we were able to hail or whether we had to walk to M Street. I just simply don't remember that.

Mr. CHERTOFF. When you got a cab, you then drove to the White House?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. When you got out at the White House, your friends got out with you?

Ms. THOMASSON. One of my friends got out with me, yes.

Mr. CHERTOFF. You spent a moment or two talking and commiserating with your friend?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. At that point, you entered the White House?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. Now, just to assist you with this, I'll tell you that we have a Secret Service record that indicates your entry that night was at 10:49 and 16 seconds, which is about 15 minutes after the page. Now, at that point, you go first to your office; right?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. Do you notify the Secret Service at the desk downstairs on the ground floor that you're intending to go into Mr. Foster's office?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Do you tell anybody while you're on the way up to your office that you're intending to go to Mr. Foster's office?

Ms. THOMASSON. I don't recall talking to anybody before—on my way to my office.

Mr. CHERTOFF. When you got to your office and put your things down, your intention was to make your way to Mr. Foster's office; right?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. You did not know who else was in the White House at that point?

Ms. THOMASSON. Had no idea.

Mr. CHERTOFF. You didn't know who was on the first floor?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. You didn't know if the White House Counsel's suite would be open?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. How were you going to get into the suite?

Ms. THOMASSON. I don't know. Never crossed my mind, sir.

Mr. CHERTOFF. Never thought about it?

Ms. THOMASSON. No.

Mr. CHERTOFF. Didn't mention it to any of the Secret Service agents?

Ms. THOMASSON. No.

Mr. CHERTOFF. You had no prearrangement to meet anybody there?

Ms. THOMASSON. No.

Mr. CHERTOFF. You went up to the first floor; correct?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. It was by happenstance that you ran into Bernie Nussbaum?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. You are quite positive that you and Mr. Nussbaum entered the office together?

Ms. THOMASSON. As I recall it, Mr. Chertoff, Mr. Nussbaum and I went up to the office together.

Mr. CHERTOFF. You recall cleaning people being there?

Ms. THOMASSON. Cleaning people were coming out of Mr. Foster's office as we were going into Mr. Foster's office.

Mr. CHERTOFF. I want to ask you whether it is consistent with your recollection that you were in Mr. Foster's office for a period of time before Mr. Nussbaum first arrived?

Ms. THOMASSON. I don't recall being in Mr. Foster's office before Mr. Nussbaum arrived. I recall going into the Counsel's Office with Mr. Nussbaum.

Mr. CHERTOFF. You have that as a memory?

Ms. THOMASSON. That's what I recall.

Mr. CHERTOFF. Now, once you get in there, where do you go first? You're in Mr. Foster's office, where do you go first?

Ms. THOMASSON. I go and sit behind Vince's desk.

Mr. CHERTOFF. Where does Mr. Nussbaum go?

Ms. THOMASSON. He is walking around the office. He's pacing back and forth. Mr. Nussbaum is visibly grieving. He is visibly upset, running his hands through his hair. His best friend, his partner, so to speak, in a legal sense—it seems to me that lawyers

really, when they work together, they think about themselves being partners, and they worked together side by side every day. Mr. Nussbaum was visibly grieving. He was very upset that night.

Mr. CHERTOFF. Did you have any discussion with him regarding where you might likely find a note?

Ms. THOMASSON. I do not recall having a discussion with him about where we might find a note.

Mr. CHERTOFF. You begin by looking at the top of the desk?

Ms. THOMASSON. All the surfaces of the furniture in the office, yes.

Mr. CHERTOFF. You start opening the drawers?

Ms. THOMASSON. Yes, I did.

Mr. CHERTOFF. Did you move the papers in the drawers?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Were there any particular drawers you opened?

Ms. THOMASSON. I opened the center drawer. I opened the drawers on the right-hand side of his desk. I don't recall whether there were even drawers on the left-hand side of his desk. I opened the drawers—I opened each drawer in his desk to look to see if there was something laying in the top of the drawer. My thought process was if someone left a suicide note, they would leave it where it could be easily found. I didn't go through every individual file in his desk or anything like that. I just looked in the top of the drawers and on the top of the desk to see if there was something there that would be a suicide note.

Mr. CHERTOFF. Why did you look in the briefcase?

Ms. THOMASSON. Because it was sitting at the base of his desk and it just looked like a likely place.

Mr. CHERTOFF. Describe the briefcase you looked at.

Ms. THOMASSON. All I can remember is I think there was some kind of flap that I lifted up and looked in. I couldn't tell you what color it was except for having seen it on TV earlier this week.

Mr. CHERTOFF. Is the briefcase you saw on television the briefcase you opened?

Ms. THOMASSON. I couldn't—I don't know. I don't know the answer to that.

Mr. CHERTOFF. Did you see a second briefcase in the office that night?

Ms. THOMASSON. I don't recall seeing but one briefcase in the office that night.

Mr. CHERTOFF. Did you have a sense that the briefcase was an important place to look for the note?

Ms. THOMASSON. I don't know that I felt that any place was any more important than any other place, Mr. Chertoff. I mean, I tried to think about where I would leave a note if I was going to leave one. I would have left it in my center desk drawer if I was going to leave a note.

Mr. CHERTOFF. When you opened the briefcase, were there documents in there?

Ms. THOMASSON. There were papers in there, yes.

Mr. CHERTOFF. Did you pull them out?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did you look in the bottom to see if there was an envelope or a folded note?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. You just opened it up and peered into it?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. Do you remember how full it was?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Were there Manila folders in it?

Ms. THOMASSON. There were papers in there. I don't really recall whether there were Manila folders in there or not.

Mr. CHERTOFF. Were there envelopes of any kind?

Ms. THOMASSON. Not that I recall.

Mr. CHERTOFF. So nothing that looked like it was sealed?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Now, during this period that you're looking on top of the desk and in the drawers and in the briefcase, where is Mr. Nussbaum?

Ms. THOMASSON. He's walking back and forth in the office. He's pacing back and forth.

Mr. CHERTOFF. Does he stay there with you the entire period of time?

Ms. THOMASSON. No, sir. He leaves at some point. About the time Mr. Foster leaves—I mean, Mr. Nussbaum leaves, I recall Maggie Williams coming in and sitting across from me and she was crying when she came in. She and I talked and cried together for several minutes and then Maggie left and Mr. Nussbaum came back in.

Mr. CHERTOFF. Now, in the first period that Mr. Nussbaum was there, was he helping you look for anything?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Does he relate to you where he's going when he leaves?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Do he and Ms. Williams pass each other?

Ms. THOMASSON. I don't know, sir.

Mr. CHERTOFF. Do you hear any greeting being exchanged?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. But your recollection is that Ms. Williams was in the room after Mr. Nussbaum has left?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Then, after Ms. Williams is in the room and she leaves, Mr. Nussbaum returns?

Ms. THOMASSON. Correct.

Mr. CHERTOFF. At this point in time, again, do you have any recollection of Ms. Williams and Mr. Nussbaum greeting each other or saying anything to each other?

Ms. THOMASSON. I don't recall that, sir.

Mr. CHERTOFF. So your best recollection is that, at least so far as you were aware, up in Vincent Foster's office that night, Ms. Williams and Mr. Nussbaum did not see each other?

Ms. THOMASSON. I don't know, sir.

Mr. CHERTOFF. Now, you did not see—this is important—you didn't see Ms. Williams and Mr. Nussbaum leaving together?

Ms. THOMASSON. No, sir, I did not.

Mr. CHERTOFF. At least not while you were there?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Now, after Mr. Nussbaum comes back, how long does he stay before you suggest he leave?

Ms. THOMASSON. Fairly quickly after he comes back. He suggested we haven't found anything, we probably should get out of here at that point.

Mr. CHERTOFF. Did he say why you should get out of there?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. Did you talk to him about the fact that you had to report back to Mr. Watkins?

Ms. THOMASSON. I don't recall, Mr. Chertoff.

Mr. CHERTOFF. Had you told him going in that Mr. Watkins had asked you to find the note?

Ms. THOMASSON. Yes, sir, I did.

Mr. CHERTOFF. Do you remember what he said about that?

Ms. THOMASSON. No, sir, I don't recall.

Mr. CHERTOFF. When he came back, this is the second time, when he returns, did he say anything to you about any discussions he had with anybody concerning locking or securing or in any way safeguarding the office?

Ms. THOMASSON. I had no discussions with him regarding that.

Mr. CHERTOFF. During the entire time you were with him that evening, did you have any discussions with him about any steps that could be taken to safeguard or secure or lock the office when you left?

Ms. THOMASSON. I had no discussions with him with regard to that, sir.

Mr. CHERTOFF. Do you know what a burn bag is?

Ms. THOMASSON. Do I know what a burn bag is? Yes, sir.

Mr. CHERTOFF. You have one in your own office?

Ms. THOMASSON. Yes, I do.

Mr. CHERTOFF. Was there one in Mr. Foster's office that night?

Ms. THOMASSON. I don't recall.

Mr. CHERTOFF. Did you look in the trash that night?

Ms. THOMASSON. No, I did not look in the trash.

Mr. CHERTOFF. Did you know whether the trash had been removed before you came in?

Ms. THOMASSON. I don't know.

Mr. CHERTOFF. Did you know whether there was a burn bag that had been removed before you came in?

Ms. THOMASSON. I don't know, sir.

Mr. CHERTOFF. Did you look at any paper or in any areas in the outer area of the White House Counsel's Office?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. When you and Mr. Nussbaum left, did you shut the door to Mr. Foster's office?

Ms. THOMASSON. I don't recall, sir.

Mr. CHERTOFF. Where did you both go?

Ms. THOMASSON. I went back to the first floor and back to the ground level of the White House to page Mr. Watkins to let him know that I had not found anything.

Mr. CHERTOFF. Where did Mr. Nussbaum go?

Ms. THOMASSON. I don't know.

Mr. CHERTOFF. Did he come out of the suite with you?

Ms. THOMASSON. I don't remember, sir.

Mr. CHERTOFF. Did he close the door behind him?

Ms. THOMASSON. I don't know.

Mr. CHERTOFF. Do you know whether he called up the Secret Service post to have the alarm set on the suite?

Ms. THOMASSON. I don't know.

Mr. CHERTOFF. You went down and you called Mr. Watkins as soon as you got to your office?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. You've indicated, from looking at other records, that you've ascertained the time in which you were able to reach him?

Ms. THOMASSON. Yes, sir. I understand that the time of the page that went out to him was at 11:36, that he answered.

Mr. CHERTOFF. So a few minutes before 11:36 is when you left the suite of the White House Counsel's Office and made your way down to your office and attempted your first effort to reach out to Mr. Watkins and report on what had happened?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. In your conversation with Mr. Watkins later that night, did you tell him what areas you had been searching?

Ms. THOMASSON. We never discussed where I looked.

Mr. CHERTOFF. Did you tell him you'd looked in the briefcase?

Ms. THOMASSON. I don't recall telling him that. I don't recall discussing where I looked, except to say I looked in Vince's office.

Mr. CHERTOFF. You had no discussions about the particulars of where you should have looked or shouldn't have looked?

Ms. THOMASSON. He didn't have a habit of telling me how to do my job. He just asked me if I would go do that for him.

Mr. CHERTOFF. After you went down to your office and first tried to reach Mr. Watkins, did you go back up to the White House Counsel's suite at any further point that night or in the early hours of the following morning?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. I have no further questions, Mr. Chairman.

The CHAIRMAN. Let's go, even though we have some time remaining, to the other side.

Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, sir.

Ms. Thomasson, once you received the page on your beeper, which is a portable device that you carried with you—you have one with you here today, do you? The record should show that Ms. Thomasson has held up a beeper. That device prints out a message for you and in this case the message, as has been clarified here, was for you to call a Mr. Watkins and provide your location number; correct?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. So you called the White House Communications Center in response to Mr. Watkins' message; correct?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. At that time, you were at a pay phone at a busy restaurant in Georgetown?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. After you got put through to Mr. Watkins, you went directly to the White House?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. So the notion is that at 10:34 you received the first message, you returned the message, you get in a cab with your friends who insist on staying with you because they see that you are upset?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. And you are driven in the taxi to the White House. Now, on a Tuesday night at about 10:30, was there much traffic, as you recall?

Ms. THOMASSON. I don't recall there being a lot of traffic, no, sir.

Mr. BEN-VENISTE. Those were in the days before all these barricades were around the White House——

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. —that has obstructed traffic to some extent about which we hear a good deal from our local government?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. That ride going from Georgetown to the White House was, in your view, how many minutes?

Ms. THOMASSON. Ten or 15 minutes, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Once you got to the White House, you indicated that you departed your friends because you did not want to be delayed by clearing them through the process to have them get admission to the White House?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. Then who did you speak with?

Ms. THOMASSON. In the White House?

Mr. BEN-VENISTE. At the White House when you arrived there.

Ms. THOMASSON. When I opened my office and went up to the first floor, I saw several people that I knew that were on the first level outside of the Chief of Staff's Office. I saw Bruce Lindsey. I saw Dana Lawrence. I saw John Emerson and his wife. I saw several people that I knew and we stopped to talk and to console each other and discuss what had happened.

Mr. BEN-VENISTE. That was my next question actually, whether you brushed those people off and said I've got to get going now or whether you stopped and spoke to them of this tragedy. You consoled them and they consoled you?

Ms. THOMASSON. I stopped and spoke to each one of them that I met up with and consoled and was consoled by them.

Mr. BEN-VENISTE. Then, at some point thereafter, you made your way to the second floor to the Counsel's suite?

Ms. THOMASSON. Right.

Mr. BEN-VENISTE. Approximately how much time do you feel that you spent in Mr. Foster's office, all told, looking in the places that you've already mentioned for a note?

Ms. THOMASSON. I think it was approximately 10 minutes, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Upon leaving the Counsel's Office you went downstairs back to your office and you attempted, again using the electronic means, to get a hold of Mr. Watkins and leave him a message?

Ms. THOMASSON. That's correct.

Mr. BEN-VENISTE. You provided Mr. Watkins with the message that you had, which was that you had found no note?

Ms. THOMASSON. Nothing.

Mr. BEN-VENISTE. Did you indicate to Mr. Watkins that you had run into Mr. Nussbaum and Ms. Williams?

Ms. THOMASSON. I don't recall having discussed that with him, sir.

Mr. BEN-VENISTE. Any reason why you wouldn't have mentioned it?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. So that was the whole episode?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. Was there anything, in your view, surreptitious about your going to the office to look for the note?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Was there anything untoward or improper in your motivation to go ahead and look for the note?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Did you mean to destroy any evidence should you have come upon it that evening?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Did anyone tell you that that was your mission?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. To the best of your knowledge, did anyone remove any documents from Mr. Foster's office that evening?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. The fact of your having searched for this note on the evening of the 20th has resulted in a tremendous amount of interest and publicity. Is that fair to say?

Ms. THOMASSON. That's fair to say.

Mr. BEN-VENISTE. Did you at any time—strike that.

Are you aware now that there are differences in recollection between you and Ms. Williams and Mr. Nussbaum as to certain details about who came first, who stayed when, who left first and all of that?

Ms. THOMASSON. Yes, sir, I understand there's a difference.

Mr. BEN-VENISTE. Did you at any time before you gave testimony on this subject attempt to sit down with Mr. Nussbaum and Ms. Williams to get your stories straight?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. That never happened?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. You tell it here today and in our depositions prior to today the way you remembered it?

Ms. THOMASSON. Absolutely, sir.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. There's still time if any of the Members want to ask questions or we'll just keep it moving.

Senator KERRY. Mr. Chairman, if I could just ask a couple of questions because I have a Member meeting I have to go to in a moment.

The CHAIRMAN. Senator Kerry.

Senator KERRY. I just want to understand completely the time-frame. You arrived at the White House—what was the recorded time by the Secret Service, 10:49 plus 16; is that correct?

Mr. BEN-VENISTE. 10:49.

Senator KERRY. 10:49. You immediately thereafter walked to the bottom floor?

Ms. THOMASSON. Yes, sir.

Senator KERRY. Where did you first go when you went in at that point?

Ms. THOMASSON. My office is entered—my office was at that time entered—you passed the men's room on the lower level, two doors past that on the left-hand side is where I entered and that's where my office was at that time.

Senator KERRY. Did you go to your office directly?

Ms. THOMASSON. Yes, sir, I did.

Senator KERRY. Did you confront anyone before you went there?

Ms. THOMASSON. No, sir, not that I recall.

Senator KERRY. You did not stop to chat with anybody at that time?

Ms. THOMASSON. I don't recall stopping to talk to anybody on that level.

Senator KERRY. What did you do when you got to your office?

Ms. THOMASSON. I unsecured my office, called the Secret Service, told them I was going in, put my things in my office, closed the door—didn't re-secure it, but closed the door and went up to the first floor.

Senator KERRY. You notified the Secret Service at that point in time that you were entering your office?

Ms. THOMASSON. Yes, sir.

Senator KERRY. How long did you spend in your office?

Ms. THOMASSON. It was not very long, just long enough to put my things away.

Senator KERRY. At that point in time when you went up to the first floor, you went up for what purpose?

Ms. THOMASSON. I was making my way to the second floor, but I stopped on the first floor to see who was there, to see if anyone knew any more than what I had been told by Mr. Watkins.

Senator KERRY. How much time did you spend in your own office, do you think?

Ms. THOMASSON. Maybe a minute or two, Senator.

Senator KERRY. A short period of time?

Ms. THOMASSON. Very short period of time.

Senator KERRY. How long did you spend on the first floor?

Ms. THOMASSON. Several minutes on the first floor.

Senator KERRY. You had a few conversations there?

Ms. THOMASSON. I had a few conversations there.

Senator KERRY. Do you recall who you had those conversations with?

Ms. THOMASSON. With Bruce Lindsey, with Dana Lawrence, with John Emerson, John Emerson's wife was there that night.

Senator KERRY. It was several people?

Ms. THOMASSON. Several people were there.

Senator KERRY. Regarding the conversations, can you give us just a gist of what went on?

Ms. THOMASSON. We were all asking why, why it happened, why would Vince have done that, why wouldn't we recognize that he had such a problem. Everybody was saying I didn't know he was upset. Everybody was very concerned about why he would do that.

Senator KERRY. Did you tell any of them where you were headed?

Ms. THOMASSON. Only Mr. Nussbaum, sir, that I recall.

Senator KERRY. Who was present at that time?

Ms. THOMASSON. He was walking back and forth—he walked up while I was talking to some of the others and I said, Bernie, I've been asked by David to go up to Vince's office to look for a note, will you go with me?

Senator KERRY. His response?

Ms. THOMASSON. He walked with me.

Senator KERRY. Did he say anything to you?

Ms. THOMASSON. He wasn't talking very much, Senator. He was very, very upset. Mr. Nussbaum never talked very much to me because I was so low on the food chain——

Senator KERRY. I'm not sure what that says.

Ms. THOMASSON. I did ask him to go with me that night and, as I recall, he did go up with me and we looked for the note. I looked for the note. He just paced around. He was very upset.

Senator KERRY. You notified the Secret Service that you were going into your office. Did you feel any need to notify them that you were going into Mr. Foster's office?

Ms. THOMASSON. It was unsecured, Senator, so I didn't feel a need to notify them at that time.

Senator KERRY. When did you learn it was unsecured?

Ms. THOMASSON. When we got to Mr. Foster's office, the Counsel's Office.

Senator KERRY. About how much time do you think had passed between you arriving in your office and your arrival in the office up there, maybe 10 minutes or so, more or less?

Ms. THOMASSON. More or less, 10 minutes.

Senator KERRY. Something like that?

Ms. THOMASSON. Something like that.

Senator KERRY. You say people were coming out of his office, cleaning personnel?

Ms. THOMASSON. Yes, sir.

Senator KERRY. How many personnel?

Ms. THOMASSON. I only recall seeing one cleaning person coming out of his office.

Senator KERRY. Male or female?

Ms. THOMASSON. Female.

Senator KERRY. Was she carrying anything?

Ms. THOMASSON. I don't recall, Senator.

Senator KERRY. Was there any discussion about leaving the office secure at that point in time?

Ms. THOMASSON. There was no discussion about securing the office at that point in time.

Senator KERRY. It was all open, completely open?

Ms. THOMASSON. Yes, sir, it was.

Senator KERRY. Was this also the area of Bernie Nussbaum's office?

Ms. THOMASSON. Yes, sir. As you are entering the Counsel's suite there's one big room with, say, four or five desks and a seating area, and then to the right as you enter would be—to the right and almost at a 180-degree turn would have been Vince Foster's cubicle. Almost directly as you turn right going straight ahead you would have gone into Mr. Nussbaum's office. So when the office door to the secretarial space was open, the whole office was unsecured at that point in time.

Senator KERRY. Understood. Since Mr. Nussbaum was still there, there was no reason for it to have been locked up at that point. Is that what you're saying?

Ms. THOMASSON. I don't know whether it had been secured earlier in the evening and unsecured when Bernie came back to the White House. I don't know the sequence of events, sir. I know it was unsecured when I got up there.

Senator KERRY. Again, to the best of your recollection, what was the amount of time that you spent in Mr. Foster's office?

Ms. THOMASSON. About 10 minutes, sir.

Senator KERRY. That was the total amount of time during which Ms. Williams and Mr. Nussbaum were with you?

Ms. THOMASSON. Yes, sir.

Senator KERRY. No other people came in during that period of time?

Ms. THOMASSON. No, sir, not that I recall.

Senator KERRY. Did you ever return to the office again during the course of that evening?

Ms. THOMASSON. No, sir.

Senator KERRY. Did you make any decisions or have any part in any decisions with respect to the locking of that office?

Ms. THOMASSON. No, sir, I did not.

Senator KERRY. Were you asked anything about the locking of it?

Ms. THOMASSON. No, sir.

Senator KERRY. Did you play any role whatsoever with respect to the burn bag?

Ms. THOMASSON. No, sir.

Senator KERRY. Did you play any role whatsoever with respect to inspection of the briefcase other than your cursory opening of the top of it?

Ms. THOMASSON. No, sir.

Senator KERRY. Did you overhear or take part in any conversations whatsoever that evening, subsequently, about any other entries into that office?

Ms. THOMASSON. No, sir.

Senator KERRY. Did you hear of any other?

Ms. THOMASSON. No, sir.

Senator KERRY. Thank you.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Thank you. Ms. Thomasson, just for a few minutes, could we review the security clearance procedures at the White House, in other words, who has access to what areas of the White House and what type of security clearances they have. For

example, what is a blue pass? What does that mean at the White House?

Ms. THOMASSON. It means you have access to the White House, sir. Anyone who works in the White House itself would have access to the White House——

Senator SHELBY. That would include sensitive areas in the White House?

Ms. THOMASSON. Not necessarily, sir. For example, if the—a blue pass would not give you access to the situation room necessarily unless you had a job in the situation room.

Senator SHELBY. Would it give you access to the White House proper?

Ms. THOMASSON. Yes, sir, it would.

Senator SHELBY. Including the East Wing and the West Wing office complex?

Ms. THOMASSON. Yes, sir.

Senator SHELBY. Does everybody at the White House generally have a security clearance?

Ms. THOMASSON. Yes, sir.

Senator SHELBY. On June 20, 1993, how long had you been working at the White House?

Ms. THOMASSON. Since March 1st.

Senator SHELBY. Since March 1st. Did you have a security clearance on——

Ms. THOMASSON. No, sir, I did not.

Senator SHELBY. Did you obtain a security clearance the following March, March 5, 1994?

Ms. THOMASSON. I received it in March 1994, yes.

Senator SHELBY. Did you know Mr. Nussbaum very well?

Ms. THOMASSON. No, sir, I did not.

Senator SHELBY. But you knew who he was?

Ms. THOMASSON. Yes, sir.

Senator SHELBY. Did you come in contact with him infrequently?

Ms. THOMASSON. I came in very infrequent contact with Mr. Nussbaum.

Senator SHELBY. Did he know your name? Did he know you and your title or whatever?

Ms. THOMASSON. I have no idea, sir.

Senator SHELBY. When you were at the White House that night and you went into the Deputy Counsel's Office, did he call you Mrs. Thompson, Patsy Thomasson? Did he call you anything? Did he just assume you belong there? If he didn't know you very well and you didn't know him very well, what was the familiarity of both of you going into the Deputy Counsel's——

Ms. THOMASSON. I told him that Mr. Watkins had asked me to look in Vince Foster's office for a note.

Senator SHELBY. Did Mr. Nussbaum ask you at least once, did you have proper security clearance?

Ms. THOMASSON. I don't know that I would have had to have——

Senator SHELBY. I'd ask you to answer the question. Did he ask you, Mr. Nussbaum—let me ask you again. Did Mr. Nussbaum at this time—when you told him Mr. Watkins asked you to go look in the office—did Mr. Nussbaum, the Counsel at the White House,

ask you, Ms. Thomasson, did you have proper security clearance to go in there or to look through documents?

Ms. THOMASSON. Mr. Nussbaum didn't question me about that.

Senator SHELBY. He didn't ask you that question?

Ms. THOMASSON. No, sir.

Senator SHELBY. Did he mention security clearance at all to you?

Ms. THOMASSON. It would not have been an issue that night, Senator Shelby. We were only looking for a suicide note.

Senator SHELBY. I didn't ask you if it was an issue. I asked you did he ask you.

Ms. THOMASSON. No, sir. I've said that.

Senator SHELBY. No, he didn't, did he? When you went into the room, just relate again, you went over and looked on top of Mr. Foster's desk?

Ms. THOMASSON. I did.

Senator SHELBY. Were there documents on top of the desk?

Ms. THOMASSON. There were papers on top of the desk.

Senator SHELBY. Papers. Were they stacks of papers like a typical working desk?

Ms. THOMASSON. Typical working office, sir.

Senator SHELBY. Did you look through the papers?

Ms. THOMASSON. No, sir.

Senator SHELBY. Did you look at the top of the paper to see perhaps what the subject matter was?

Ms. THOMASSON. No, sir.

Senator SHELBY. Did you look under the desk?

Ms. THOMASSON. No, sir.

Senator SHELBY. Did you sit in the chair, as you related?

Ms. THOMASSON. I did sit in the chair, yes, sir.

Senator SHELBY. When you sat in the chair, did you look in the drawer, the top drawer, as you related?

Ms. THOMASSON. I've testified to that, sir, yes.

Senator SHELBY. Did you look in any of the side drawers of the desk?

Ms. THOMASSON. I've testified I did, sir.

Senator SHELBY. Not what you testified. Did you do it?

Ms. THOMASSON. Absolutely did.

Senator SHELBY. Did you look at every item in the side drawers of the desk?

Ms. THOMASSON. No, sir.

Senator SHELBY. What did you do?

Ms. THOMASSON. I looked at the top of those desk drawers to see if there was anything that would have looked like a suicide note.

Senator SHELBY. What would you describe as looking like a suicide note, like a personal handwritten note or something? How can you describe that?

Ms. THOMASSON. In my mind, what I was looking for was something that was in an envelope that would have someone's name on the front, perhaps Lisa Foster.

Senator SHELBY. You didn't find that, did you?

Ms. THOMASSON. No, sir.

Senator SHELBY. Did Mr. Nussbaum, while you were seated at the desk, sitting at the desk or seated at the desk, did he look around the office for something?

Ms. THOMASSON. No, sir.

Senator SHELBY. What did he do?

Ms. THOMASSON. He was pacing around the office.

Senator SHELBY. Just pacing the office?

Ms. THOMASSON. He was very upset. He was very distraught about Vince's death that night.

Senator SHELBY. Was he quiet, as you described it?

Ms. THOMASSON. He was quiet and rubbing his hands through his hair. He was very distraught about Vince's death.

Senator SHELBY. Did you have a conversation while you were sitting there or was everything just quiet?

Ms. THOMASSON. Fairly quiet, sir.

Senator SHELBY. You didn't mention anything to him like I haven't found anything or I don't see anything that's relevant to what I'm looking for?

Ms. THOMASSON. I don't recall having had a conversation of that nature, sir.

Senator SHELBY. About how long were you in there, in your best judgment?

Ms. THOMASSON. In my best guess, sir, I was there about 10 minutes.

Senator SHELBY. Did Mr. Nussbaum leave when you left, as you relayed?

Ms. THOMASSON. As I said earlier, Senator, I was in the office with Mr. Nussbaum. Mr. Nussbaum left the office. Maggie Williams came into the office and sat across from me. Maggie got up and left the office after a few minutes and Bernie came back into the office.

Senator SHELBY. But at no time while you were in the office, for 10 minutes, did Mr. Nussbaum ever mention to you, or suggest to you perhaps, anything regarding whether or not you had a security clearance?

Ms. THOMASSON. No, sir, he didn't.

Senator SHELBY. At that time you didn't have one, as you've related?

Ms. THOMASSON. That's correct.

Senator SHELBY. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. With respect to the question of your security clearance, was there any delay in connection with the issuance of your security clearance, to the best of your knowledge, that was attributable to any investigation or inquiry about anything to do with your background?

Ms. THOMASSON. Not to my knowledge, sir.

Mr. BEN-VENISTE. Was, to the best of your knowledge, the delay attributed solely to delays in processing the application and relevant information?

Ms. THOMASSON. As far as I know, that was the only delay, sir.

Mr. BEN-VENISTE. When you entered Mr. Foster's office, was it your intention to go through his files and review any material regarding Supreme Court appointments or treaties with Haiti or any such things?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. In fact, if I understand your testimony, you knew pretty much what you were looking for, you looked for that thing, and you did not find it?

Ms. THOMASSON. That's correct, sir.

Mr. BEN-VENISTE. When you talk about Mr. Nussbaum's state that evening, had you ever seen him in the condition he was in as you saw him on the night of the 20th?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. Would you describe that in some more detail, please?

Ms. THOMASSON. Everyone who was at the White House that I saw was very distraught. Most everyone there was in tears, both men and women. It was very apparent that Mr. Nussbaum—it seemed to me that it was apparent that Mr. Nussbaum had been crying, too, although he was not absolutely crying when he was in the office with me. He was pacing back and forth. Bernie has a habit of rubbing his hair and rubbing his head and he was doing that as he was walking back and forth in the office. He was visibly shaken by this business of having his partner commit suicide, as we all would be, I think. I certainly was.

Mr. BEN-VENISTE. Let me ask you a couple of other questions about the details of that evening. Is it correct that you did not, when you entered the White House Counsel's suite, go into Mr. Nussbaum's personal office at any point?

Ms. THOMASSON. I never went into Mr. Nussbaum's suite that night.

Mr. BEN-VENISTE. You went into Mr. Foster's office only directly from the entranceway and small reception area?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. There is no question in your mind that the GSA cleaning person had been in Mr. Foster's personal office?

Ms. THOMASSON. No question in my mind, sir.

Mr. BEN-VENISTE. Did you ever see Evelyn Lieberman in the White House Counsel's Office that evening?

Ms. THOMASSON. I don't recall seeing her in the Counsel's Office that evening.

Mr. BEN-VENISTE. Did you see a Secret Service uniformed officer in the White House Counsel's Office that evening?

Ms. THOMASSON. I don't recall seeing him, sir.

Mr. BEN-VENISTE. Did you know whether or not there was a guard, a Secret Service uniformed guard in Mr. Foster's office with the cleaning person at the time that you arrived, when you saw the cleaning person exit?

Ms. THOMASSON. I do not recall seeing the uniformed division guard there that night, although it's normal procedure for someone to be with the cleaning people when they go into the offices.

Mr. BEN-VENISTE. Now that you think about it, you didn't see him?

Ms. THOMASSON. I just did not see him, sir. I don't recall having seen him.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Ben-Veniste.

Ms. Thomasson, at one point, I think it was Mr. Ben-Veniste who asked you if you were aware of the differences in the testimony or

aware of differences in the accounts given of the night of July 20th by you, Mr. Nussbaum and Maggie Williams, and you said that you were; is that correct?

Ms. THOMASSON. Yes, sir, that's correct.

The CHAIRMAN. You also testified that you did not speak to any of them prior to or after their testimony or your testimony; is that correct?

Ms. THOMASSON. That's correct.

The CHAIRMAN. Did you have occasion to see notes or see their depositions?

Ms. THOMASSON. No, sir. My lawyer discussed it with me yesterday.

The CHAIRMAN. Your lawyer discussed the differences?

Ms. THOMASSON. He only told me that there were differences, sir.

The CHAIRMAN. Did he tell you what those differences were?

Ms. THOMASSON. There was a difference about when I went into the office and who went into the office with me and the timing, sir.

The CHAIRMAN. But he did not relate to you that, for example, Maggie Williams testified that she went in with you or that she went in prior to you or that there was any difference of that type? He just said there are differences?

Ms. THOMASSON. The specific thing he related to me was that Mr. Nussbaum did not recall having gone into the office with me initially. He remembers coming back into the office, but he told me he didn't remember the initial visit to the office.

The CHAIRMAN. But you remember quite clearly having first encountered Mr. Nussbaum on the first floor; is that correct?

Ms. THOMASSON. Yes, sir, that is.

The CHAIRMAN. Along with a group of others, Mr. Lindsey and others as you just have testified, and that you related to at least Mr. Nussbaum that Mr. Watkins had called you?

Ms. THOMASSON. That's correct, sir.

The CHAIRMAN. Mr. Watkins asked you to look into Vince Foster's office to see if there was a note?

Ms. THOMASSON. That's correct.

The CHAIRMAN. Mr. Nussbaum said he would accompany you?

Ms. THOMASSON. Yes, sir.

The CHAIRMAN. Both of you went up together?

Ms. THOMASSON. Yes, sir.

The CHAIRMAN. You entered more or less together, together or you ahead of him or he ahead of you?

Ms. THOMASSON. Yes, sir.

The CHAIRMAN. You're quite sure of that?

Ms. THOMASSON. That's what I recall, Senator.

The CHAIRMAN. Pretty sure of that?

Ms. THOMASSON. That's exactly what I recall.

The CHAIRMAN. That's exactly what you recall. Fine. I have no further questions.

Mr. Chertoff.

Mr. CHERTOFF. Did you just tell us that your lawyer told you that Mr. Nussbaum had not recalled going in with you the first time, but only coming in the second time?

Ms. THOMASSON. That's my understanding of what my lawyer told me, yes.

Mr. CHERTOFF. I'm going to read to you from Mr. Nussbaum's deposition on page 42 and let's see if this is what you have in your mind as your impression of the inconsistency.

This is a question to Mr. Nussbaum:

Question: When you went in the suite for the first time that evening after you had seen the President and you were going back to the West Wing, it's your testimony that Ms. Thomasson and Ms. Williams were already there?

Answer: That's correct.

Question: You did not take them into the suite?

Answer: My memory is that they were already there. I did not take them into the suite.

Was it your understanding that that was his testimony or that he merely didn't recall the first time coming in with you?

Ms. THOMASSON. It was a very quick discussion yesterday. As I recall, what my attorney said was that Bernie did not recall having been in the suite with me when I initially went into the suite.

Mr. CHERTOFF. When you went up to the suite after you arrived at the White House, as you've testified it happened, the suite was open because the cleaning personnel were there; right?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. Were you prepared to go into Vincent Foster's office with or without Bernie Nussbaum?

Ms. THOMASSON. I knew—I was prepared to go to that suite and look for that note, yes, sir.

Mr. CHERTOFF. You would not have hesitated to go into the suite, into Mr. Foster's office, open his drawers, open his briefcase, look at his papers alone without anybody from the White House Counsel's Office present; correct?

Ms. THOMASSON. That's not correct, sir. It was my intent to find someone to go in there with me, sir.

Mr. CHERTOFF. I'm sorry. You're telling us now that you had the intention to find someone to go in with you?

Ms. THOMASSON. I've never said any differently from that, Mr. Chertoff. When I saw Mr. Nussbaum, I asked him to go with me. Had he not been there to go with me, I would have asked someone to go in with me.

Mr. CHERTOFF. I thought your testimony earlier was you went by the Secret Service post and you didn't notify them; right?

Ms. THOMASSON. I wouldn't have asked somebody from the Secret Service, sir.

Mr. CHERTOFF. Why not?

Ms. THOMASSON. I would have asked somebody from the White House to go with me.

Mr. CHERTOFF. Doesn't the Secret Service work at the White House?

Ms. THOMASSON. Yes, sir, they work at the White House, but I would have asked a White House staff person to go with me.

Mr. CHERTOFF. Isn't the Secret Service trustworthy?

Ms. THOMASSON. Oh, yes, sir. They're very trustworthy.

Mr. CHERTOFF. Aren't they discrete?

Ms. THOMASSON. Yes, sir.

Mr. CHERTOFF. Is there some reason you didn't want to have a Secret Service agent present when you conducted the search?

Ms. THOMASSON. I did not know whether there were any Secret Service agents there. There were a number of uniformed division

agents who work at specific posts, but they wouldn't be able to leave those posts to go with me anywhere.

Mr. CHERTOFF. There was no uniformed service division officer you could request to have come up there and meet you at the White House Counsel's Office?

Ms. THOMASSON. I'm sure that I could have called the control center. At that time I didn't know to call the control center to get another Secret Service agent. I didn't understand that process at the time. I knew that there were certain Secret Service uniformed division agents who had specific locations where they had to be and they can't leave those posts. I wasn't prepared to ask one of them to leave his post to go with me. I was prepared to ask somebody from the White House staff to go with me.

Mr. CHERTOFF. At this point you were Mr. Watkins' Deputy?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. He was responsible for management and administration?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. You were his number two in that job?

Ms. THOMASSON. That's correct.

Mr. CHERTOFF. You're telling us you were not in a position to request the Secret Service send someone over from the uniformed division to accompany you in the suite?

Ms. THOMASSON. I'm telling you I would have asked someone from the White House staff to go with me, sir.

Mr. CHERTOFF. As you testified earlier, when you got to the White House, you didn't know who was around; right?

Ms. THOMASSON. No, sir, I didn't.

Mr. CHERTOFF. Is your testimony now you were going to search for somebody to go with you into the suite before you went into the suite?

Ms. THOMASSON. I didn't think I would have a problem finding someone at the White House because there would be people there.

Mr. CHERTOFF. But you didn't make any arrangement?

Ms. THOMASSON. No, sir, I didn't.

Mr. CHERTOFF. Were there certain people you would have brought in and certain people you wouldn't have brought in?

Ms. THOMASSON. I don't think I would have been particularly selective about it, no, sir.

Mr. CHERTOFF. Did you make a conscious decision to avoid bringing someone from Secret Service or some law enforcement type agency in with you?

Ms. THOMASSON. No, sir.

Mr. CHERTOFF. About how long was it from the time you arrived at the White House until the time you went to the suite?

Ms. THOMASSON. I don't know, Mr. Chertoff. It would have been 10 or 15 minutes probably.

Mr. CHERTOFF. You got back to your office down below at 11:36; correct?

Ms. THOMASSON. Sometime before 11:36.

Mr. CHERTOFF. Once you got to your office, you didn't waste time in calling Mr. Watkins?

Ms. THOMASSON. I didn't call Mr. Watkins. I paged Mr. Watkins.

Mr. CHERTOFF. You didn't waste time in paging Mr. Watkins?

Ms. THOMASSON. I don't know now, Mr. Chertoff, if I paged him on my computer or whether I called the White House operator to have him paged. If I paged him from my computer, I would have had to wait long enough for my computer to be booted up and turn itself on. It is a more accurate way to send a page than sending one through the White House operator because you can see the screen and you know exactly what message you send.

Mr. CHERTOFF. My question is still you didn't hesitate, delay or——

Ms. THOMASSON. No, I did not.

Mr. CHERTOFF. —or waste time in sending this message?

Ms. THOMASSON. No, I did not.

Mr. CHERTOFF. You knew it was important to Mr. Watkins?

Ms. THOMASSON. Yes, I did.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Ms. Thomasson, these questions Mr. Chertoff asked you were all hypothetical. You went to the White House and you ran into Bernie Nussbaum; correct?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. So all these questions about who you would have found or what you would have done or who else you might have gone in with are really moot in this instance?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. Those issues never presented themselves to you, did they?

Ms. THOMASSON. No, sir, they did not.

Senator SARBANES. When you got there you ran into him, I take it, on the first floor——

Ms. THOMASSON. Yes, sir.

Senator SARBANES. —after you went from your basement office—now, he was the White House Counsel?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. He was Foster's partner?

Ms. THOMASSON. Absolutely.

Senator SARBANES. He was the one who had access—it was his suite, in effect. Foster had an office next to Nussbaum in the White House Counsel's suite; correct?

Ms. THOMASSON. Yes, sir.

Senator SARBANES. Senator Dodd.

Senator DODD. Mr. Chairman, I don't know if counsel has some additional questions, but I'll be glad to defer to him.

Mr. BEN-VENISTE. Very briefly, Ms. Thomasson, the purpose of my question is about inconsistencies. This isn't the first forum that you have given this explanation to, is it?

Ms. THOMASSON. No, sir.

Mr. BEN-VENISTE. You have given testimony as requested, I presume, to the FBI and to one or more Independent Counsels about this very same fact situation?

Ms. THOMASSON. Yes, sir.

Mr. BEN-VENISTE. Now, my question to you before was—and I'll put it to you again for purposes of closure on this issue—whether at any point you made any concerted effort to get together with the other individuals whom you saw the evening of July 20, 1993, to

try to get a uniform story ironed out and straight with no discrepancies?

Ms. THOMASSON. No, sir, we've never done that.

Mr. BEN-VENISTE. I don't have anything further.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Thomasson, you testified in your deposition that you have known President Clinton since 1968; is that right?

Ms. THOMASSON. That's correct, sir.

Senator FAIRCLOTH. So you have been friends for close to 30 years?

Ms. THOMASSON. Almost.

Senator FAIRCLOTH. A long time. Ms. Thomasson——

Senator SARBANES. Ms. Thomasson may want to make that exactly correct and not lengthen it to 30 years.

Senator FAIRCLOTH. Given that there were already many people at the White House, several of whom were in the West Wing near Mr. Foster's office, did David Watkins ever explain to you why he specifically wanted you, why he hunted you down in a restaurant when he needed someone to do the search? Why didn't he get several of those people that were already there to do the search? Why didn't he call the White House and have somebody take a look? Why did he specifically hunt you down in Georgetown to get a cab, come to the White House and you be the one to go in to do the search?

Ms. THOMASSON. He never discussed what his logic and reasoning was, but I was his Chief Deputy, Senator Faircloth. It would have been normal for David to make a request of that nature to me. It's very hard for me to understand, but one leads their life by working off a pager, and Mr. Watkins might have assumed I still was at the White House. I don't have any idea, but paging each other is a very normal thing. Sometimes I get as many as 14 or 15 pages a day.

Senator FAIRCLOTH. But when Watkins instructed you to search Vincent Foster's office, you didn't have a security clearance, did you?

Ms. THOMASSON. I had a pass to get into the White House.

Senator FAIRCLOTH. I didn't ask that. I asked did you have security clearance?

Ms. THOMASSON. No, sir, I didn't.

Senator FAIRCLOTH. You didn't have security clearance, but you went right on and searched his office?

Ms. THOMASSON. Security clearance has to deal with top secret and secret documents——

Senator FAIRCLOTH. What did you think might be in Vincent Foster's office but top secret documents?

Ms. THOMASSON. Top secret documents have a specific way that they're taken care of, Senator, and they would not have been in or around or on Mr. Foster's desk if they were cared for in a proper manner.

Senator FAIRCLOTH. But it wasn't a breach of White House security for you to be in Vince Foster's office that night since you didn't have security clearance?

Ms. THOMASSON. Not to my knowledge, sir.

Senator FAIRCLOTH. Was it to anybody else's knowledge a breach of White House security?

Ms. THOMASSON. No, no one has approached me with regard to that, sir.

Senator FAIRCLOTH. Why did the White House deny the Park Police, the FBI and the Department of Justice access to documents in Mr. Foster's office, on the grounds that it would be a breach of security, when you had rifled through these very documents on the evening of the 20th and didn't have clearance? If this isn't a total contradiction, I don't know what it is.

The FBI, the Park Police and the Department of Justice didn't have security—there would be a breach of security for them to go into Foster's office, yet you, who had not been able to get security, were in there the night before going through documents?

Ms. THOMASSON. That's a question you'll have to pose to someone else, Senator. I have no earthly idea.

Senator FAIRCLOTH. Let me get back to your security clearance a moment. You had been in the White House 6 months, 7 months on July 20, 1993?

Ms. THOMASSON. No, sir, I came on March 1st.

Senator FAIRCLOTH. All right. March, April, May. You had been there—March, April, May, June, you had been there 4 months. Why didn't you have a security clearance?

Ms. THOMASSON. The paperwork had not been all completed at that point by me. It was my fault. I was delinquent in turning my paperwork in.

Senator FAIRCLOTH. Why were you delinquent in turning it in?

Ms. THOMASSON. Because, Senator, one of my first assignments when I came to work at the White House was to testify before Congress on the White House's budget and, in my first months at the White House, I spent my time doing that and didn't fill out my paperwork. It was my fault, and I assume responsibility for that, Senator.

Senator FAIRCLOTH. When you gave your resume of where you had worked a while ago, you didn't mention a man named Dan Lasater, but you testified in your deposition that from 1983 to 1992 you worked for Dan Lasater; is that right?

Ms. THOMASSON. Yes, sir.

Senator FAIRCLOTH. Why didn't you mention it a while ago when you were going through the people you had worked for?

Ms. THOMASSON. There are a lot of other people I worked for that I didn't mention either, Senator. I'll be glad——

Senator FAIRCLOTH. It might have been a good thing to mention all of them, but Dan Lasater was a friend and political supporter of Bill Clinton; right, when he was Governor of Arkansas?

Ms. THOMASSON. He had made contributions in previous campaigns to the Governor, yes.

Senator FAIRCLOTH. Health fundraisers?

Ms. THOMASSON. On one occasion, yes.

Senator FAIRCLOTH. Dan Lasater gave a job to Roger Clinton?

Ms. THOMASSON. I think that's correct, sir.

Senator FAIRCLOTH. Roger Clinton was Bill Clinton's half brother? I'm going by FBI testimony and depositions.

Ms. THOMASSON. I think that's correct, Senator.

Senator FAIRCLOTH. Dan Lasater paid off Roger Clinton's drug debts.

Senator SARBANES. Is this within the scope, Mr. Chairman——

Senator FAIRCLOTH. Senator Sarbanes, I come through the door and say good morning, it's beyond the scope according to you.

Senator SARBANES. I'm almost there, Senator Faircloth. I have to admit that, but not quite, and I've tried to forbear, but I think when you——

Senator FAIRCLOTH. You are not forbearing long enough.

Senator SARBANES. When you load these questions outside the scope, we need to say something about it.

Senator FAIRCLOTH. They aren't outside the scope.

Senator SARBANES. You want to range all over the horizon and I understand that you want to do that, but that's not the charge we're operating under here.

The CHAIRMAN. I'm going to let the Senator continue for awhile and if it persists and doesn't tie into something, then I'll ask him to abate. Go ahead, Senator.

Senator DODD. Mr. Chairman, what are we getting at here? Are we getting into a little guilt by association? I think we ought to be careful about that.

The CHAIRMAN. Let's try to confine it, to go to the heart of the question, Senator.

Senator FAIRCLOTH. Mr. Chairman, just to clarify——

The CHAIRMAN. Go ahead.

Senator FAIRCLOTH. Dan Lasater's company is included. It's named in the Senate resolution on page 25. That's what I'm talking about. It is clearly——

The CHAIRMAN. So you're——

Senator SARBANES. No, you're not talking about the bond underwriting contracts of Lasater & Company. You've moved far off of that. Although that's not the focus of this particular set of hearings and would come later and we've had some of that—we have not kept it totally here on the handling of the Foster papers, which is what the subject matter of this is to be. Later we are to address the other things. But even when we get to the later part, the questions you're asking now are clearly outside the scope.

The CHAIRMAN. I'm going to let the Senator continue. If they're connected, we'll find out. We're not going to let this go indefinitely, but he is a Senator. He does have a right to put forth questions. If they go beyond the scope, I'm going to ask him to stop. He has been very cooperative, as have all the Members. Go ahead, Senator.

Senator FAIRCLOTH. Dan Lasater was eventually convicted of cocaine trafficking and sentenced to prison; is that right?

Ms. THOMASSON. Mr. Lasater was convicted of social distribution of cocaine and he was sentenced to prison, yes, sir.

Senator FAIRCLOTH. He was pardoned of his crime of drug trafficking by then-Governor Bill Clinton.

The CHAIRMAN. I think that——

Senator FAIRCLOTH. You worked for him. You know——

The CHAIRMAN. There was a pardon, but that—relief from civil disabilities.

Senator FAIRCLOTH. All right. Do you know if your association for over some 10 years with Dan Lasater, the convicted dealer, may have had anything to do with holding up your security clearance?

Ms. THOMASSON. To my knowledge, Senator, it had nothing to do with holding up my security clearance.

Senator FAIRCLOTH. All right. Moving on, Ms. Thomasson, as you know, foreign travel is of great interest to the FBI. When they were doing a background investigation for security clearance—in February 1984 you traveled to the Central American nation of Belize with Dan Lasater on his private jet, according to a statement Dan Lasater gave to the FBI.

Senator SARBANES. What scope is this within, Mr. Chairman?

Senator FAIRCLOTH. Just a minute and I'll get there.

The CHAIRMAN. Go ahead.

Senator FAIRCLOTH. Would you mind telling us what the trip was about, what it was for?

Senator SARBANES. Let's find out what the scope is. How is this within the scope of this inquiry? Senator Faircloth is——

The CHAIRMAN. Let's give the Senator an opportunity to explain what he intends to bring out.

Senator Faircloth.

Senator SARBANES. Of course by the time he's finished doing that, he's trampled all over the scope restrictions.

Senator FAIRCLOTH. Would you tell us what the trip was for?

Ms. THOMASSON. The trip was to look at a piece of land that was for sale in that country, several thousand acres, in fact, 24,000 acres of farmland that was for sale that was being used for raising cattle. There was the opportunity to buy that piece of land for a very small amount on a per-acre basis to use for cattle raising to ship the cattle to various and sundry islands in the Caribbean.

Senator FAIRCLOTH. As you well know, the FBI is terribly suspicious of people that were drug dealing, as Mr. Lasater was drug dealing, and so you being with him on a trip to Belize——

Senator DODD. Mr. Chairman——

The CHAIRMAN. I think we've gone a little too far now. I thought this was about some business transaction that was somehow related to the files in Vincent Foster's office.

Senator FAIRCLOTH. OK. Ms. Thomasson, in your deposition on page 15, you were asked about the relationship between Lasater, Incorporated and Madison Guaranty. You testified that Lasater & Company did no business with Madison Guaranty other than one Lasater subsidiary known as Emerald Isle Condominiums, Incorporated; is that right?

Ms. THOMASSON. I testified that Emerald Isle Condominiums, Inc. had a loan with Madison at one time, yes, sir.

Senator FAIRCLOTH. You testified that they had no business with Madison except the Emerald Isle loan?

Ms. THOMASSON. That I was knowledgeable about, Senator.

Senator FAIRCLOTH. Ms. Thomasson, did Lasater & Company have a trading account for the purchase and sale of securities with Madison Guaranty?

Ms. THOMASSON. I don't have any idea, sir.

Senator FAIRCLOTH. You worked there. You were——

Ms. THOMASSON. I worked there for 6 months.

Senator FAIRCLOTH. You had power of attorney?

Ms. THOMASSON. I worked for Lasater & Company, the investment banking firm, from June 1983 until November 1983. Subsequent to that, I did not work for the investment banking firm and had no knowledge of who they had accounts with and who they didn't have accounts with.

Senator FAIRCLOTH. But you worked with Lasater for how many years?

Ms. THOMASSON. I worked with him for almost 10 years.

Senator FAIRCLOTH. You worked with him for almost 10 years, but you don't know. Do you recall in any great detail the true nature of the relationship between Madison Guaranty and Lasater & Company—clearly they had more involvement than this one Emerald Isle account?

Ms. THOMASSON. My familiarity with the relationship between Madison and Lasater, Inc. and its subsidiaries was this Emerald Isle loan that I've discussed. I don't know what relationship the investment banking firm might have had with Madison.

Senator FAIRCLOTH. I find that hard to believe and disturbing. Let me refresh your memory, then. This is a copy of the Board of Directors of Madison Guaranty from June 21, 1984, signed by Jim and Susan McDougal. It reads in part——

Senator DODD. Mr. Chairman, are we going to——

The CHAIRMAN. I'll let him——

Senator DODD. I know we're going to get into this eventually, but I thought the set of these hearings were on what this witness could tell us about——

The CHAIRMAN. Let me ask you this, Senator. Do you believe that this witness can shed any light with respect to this? Is that why you're bringing that in?

Senator FAIRCLOTH. Yes, I believe it would. I didn't realize we had a sequence in which you were supposed to ask questions—I thought you were supposed to ask them as they came up and you saw fit to ask them.

The CHAIRMAN. True. However, let me say——

Senator FAIRCLOTH. Let me finish this. This is——

Senator DODD. The subject of these hearings is about documents in Vince Foster's office, and we're talking about things that I gather, unless someone else indicates otherwise, unless my colleague has information that would indicate otherwise, here——

Senator FAIRCLOTH. But, Senator, it says on page 6 of the resolution it allows us to probe such facts as are warranted and appropriate.

Senator DODD. I'm not questioning that. We're talking about a set of hearings here that specifically are to focus on the handling of the papers or the documents surrounding Vince Foster's suicide. That's what I gather, as all of us prepared and worked on that basis to try to focus on that aspect. Then, I gather we're going to have another set of hearings that come to these other aspects.

Senator FAIRCLOTH. Let me ask the question: Why the problem with her answering? Are you afraid she'll say something she's not supposed to?

Senator DODD. No, Senator.

The CHAIRMAN. No. No, I don't——

Senator SARBANES. We're not going to accept that—we're not going to accept that innuendo, Mr. Chairman. The fact is we focused on——

The CHAIRMAN. Please, please. I ask both my colleagues—all of my colleagues for some patience here. I want to give latitude, but yet we have to comport to the scope of these particular hearings. While my friend Senator Faircloth is right, that we will have and do have the ability under the resolution to examine these things, the question is whether these were papers that have some bearing to the papers in Vince Foster's office, if so, then we go outside of the scope for that purpose. But the questions you posed will be appropriate at future hearings. I can assure the Senator you absolutely are well within your right to raise them, but I think the scope of these particular hearings, may be narrower, and I'd ask the Senator to withhold at this time.

Senator FAIRCLOTH. Thank you, Mr. Chairman. Just to restate the accuracy of Ms. Thomasson's deposition—she said that there was no relationship between Madison and Lasater, and this document shows she was wrong, and that is relevant, and we'll get to it later. Thank you.

The CHAIRMAN. Let me say, so this might allay the Senator's concerns that we'll not have an opportunity in the future to get into the question——

Senator DODD. You might want to take the document—we're sitting here——

The CHAIRMAN. We can take it down, or leave it up, but the point is, in the future when we get to the question of Madison and the relationship of Lasater, et cetera, the Senator will be well within his rights to raise the question again to Ms. Thomasson. But the question, at this point in time, is not connected to this particular aspect of Whitewater. Sometimes it gets complex and I understand that Senators might want to go beyond. I thank the Senator for refraining and I thank my colleagues for their patience.

In fairness, my colleagues on the Democratic side, do you have anything to add?

Senator SARBANES. I think we do now.

Senator Dodd.

Senator DODD. Just to pick up on the last comment, obviously what we want to get to is the facts on this matter and there's a way to do it. There is an orderly process we have to follow and that's the best way to proceed, and so I appreciate your handling of it.

Again, there are legitimate issues we're going to have to pursue on these matters, but there's a way in which you do it so you have the best chance of eliciting all the pertinent information that we need.

I just, again, wanted to raise with the witness, if I could, very bluntly: Ms. Thomasson, was there any discussion you had with anyone, on or immediately after July 20, 1993, relating to Whitewater, to the Travel Office in the context of the discussions you had about going into Mr. Foster's office?

Ms. THOMASSON. No, sir.

Senator DODD. For the purpose of clarity, had you even applied for a security clearance on or about July 20th?

Ms. THOMASSON. No, sir, I had not.

Senator DODD. So in reference to the question of whether or not there was any holdup of your security clearance at that time, you hadn't even applied for one?

Ms. THOMASSON. That's correct, sir.

Senator DODD. So any implication that somehow you were suffering from some connection with someone who had their own difficulties had no bearing whatsoever at that particular time?

Ms. THOMASSON. That's correct, sir.

Senator DODD. I've asked others and I gather my colleagues may have raised some of these questions before, but I've asked them of others and I just want to tighten it down as tightly as we can here, and that is whether or not on or after July 20th, the date of Vincent Foster's suicide, anyone asked you or instructed you to destroy any documents——

Ms. THOMASSON. No, sir.

Senator DODD. —in Vincent Foster's office?

Ms. THOMASSON. No, sir.

Senator DODD. On or after that date, did you destroy any documents at all?

Ms. THOMASSON. No, sir.

Senator DODD. On or after that date, did anyone ask you or instruct you to conceal from law enforcement officials any documents from Vincent Foster's office?

Ms. THOMASSON. No, sir.

Senator DODD. In any way did you take any actions to impede, obstruct or in any way interfere with law enforcement's investigation of Vincent Foster's suicide?

Ms. THOMASSON. No, sir.

Senator DODD. I thank you very much.

Mr. Chairman, I thank you.

Senator SARBANES. Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman. I just can't help but comment as I begin my questioning here that when I made my opening statement I referred to a statement that Vince Foster himself wrote about this city, that here ruining people is considered sport. I hope all of us can remember to keep our perspective and to hopefully not continue that legacy as we go through this hearing on his suicide.

Ms. Thomasson, since your appearance here does relate to the handling of documents in Vince Foster's office, I want to ask you a few questions and, actually, they follow up on Senator Dodd's. Did you hear or see Bernard Nussbaum or Maggie Williams remove or destroy any documents when you were in that office or at any other time?

Ms. THOMASSON. No, ma'am, I didn't.

Senator MURRAY. Did you hear or see Bernard Nussbaum or Maggie Williams talk about any documents?

Ms. THOMASSON. No, ma'am.

Senator MURRAY. Your purpose in that room was to look for a note?

Ms. THOMASSON. To look for a suicide note, yes.

Senator MURRAY. Can you remind this Committee what your state of mind was when you were in that room?

Ms. THOMASSON. I was distraught. I was so crushed that my friend killed himself, someone I worked with on a day-to-day basis. I felt somehow that I had failed. To not recognize in someone you work with every day that they were that depressed and stressed out was somehow a failure on the part of those who worked with him every day.

Senator MURRAY. Thank you. Those are the only questions I feel are necessary. I yield back my time.

Senator SARBANES. Senator Bryan, did you have anything you wanted to ask?

Senator BRYAN. Thank you very much, Senator. I wanted to ask a series of questions about the temporary White House pass. I had to leave for an important conference call. If that has been inquired of, I will forbear on that issue.

The CHAIRMAN. No—there has been some touching on it, yes, there has been.

Senator BRYAN. You've gone into that? The only question that I will have is more in the way of an observation. Mr. Watkins was, in fact, in the chain of command, your boss, your supervisor, your superior in the White House hierarchy; is that not correct?

Ms. THOMASSON. Yes, sir.

Senator BRYAN. So it should not strike anybody as unusual that in terms of the relationship that you had with him in terms of your professional responsibility, that if he asked you to undertake an assignment, that you would do it?

Ms. THOMASSON. That's correct, sir.

Senator BRYAN. I take it that there may be many other instances, totally unrelated to the Whitewater matter that we're pursuing now, when he requested you to do certain things and you did them?

Ms. THOMASSON. Yes, sir.

Senator BRYAN. You did not ask anyone else in the White House about it. He was the individual that you were responsible to and accountable to in terms of the office functions that you were assigned to handle?

Ms. THOMASSON. Yes, sir.

Senator BRYAN. So, on the night in question here, you received a call, he asked you to check to see if there is a note. You didn't think there was anything particularly unusual about that, I take it, at the time?

Ms. THOMASSON. No, sir, I did not.

Senator BRYAN. As you have indicated, you were en route from the restaurant or virtually about to leave. You did so. You went to the White House. You were not in the custom or practice, I take it, that when Mr. Watkins asked you to do something, to check with other staff members in the White House about what you've been requested to do, as a matter of practice?

Ms. THOMASSON. That's correct, sir.

Senator BRYAN. So you went to the office, as you've indicated. You checked the surfaces. I take that to be the desk—I don't know if there was any credenza or any other tables, but maybe you could embellish that just a bit for me.

Ms. THOMASSON. There was a desk, a credenza, a couple of tables in Mr. Foster's office. I looked on all of those surfaces to see if there was a suicide note that he had left.

Senator BRYAN. You were not looking for any files?

Ms. THOMASSON. No, sir.

Senator BRYAN. Of any character?

Ms. THOMASSON. No, sir.

Senator BRYAN. I think you shared with us, as you were trying to analyze what somebody's state of mind might be, that you might take a look in the center drawer to see if, indeed, that's where a note or some comment or instruction to one's loved ones, family, or office colleagues might be contained. You did, in fact, open the drawer, the center drawer?

Ms. THOMASSON. Yes, sir, I did.

Senator BRYAN. You opened the other drawer or drawers, which, as you indicated, were on the right-hand side of the desk?

Ms. THOMASSON. Correct, sir.

Senator BRYAN. You did a very perfunctory look in, without examining the contents of the file, to see if there might be something lying on the top of those files of the nature of a suicide note?

Ms. THOMASSON. Yes, sir.

Senator BRYAN. You found nothing?

Ms. THOMASSON. That's correct, sir.

Senator BRYAN. That was, in essence, what you were asked to do, and that's what you did?

Ms. THOMASSON. Yes, sir.

Senator BRYAN. Then you reported back to your boss, Mr. Watkins, and said, I expect, I could not find any suicide note or evidence of a suicide note?

Ms. THOMASSON. Yes, sir.

Senator BRYAN. In the timeframes that you've indicated are approximate, but counsel has told us sometime around 10:30, and I could be corrected, there was a record of a phone call you made to Mr. Watkins. It was patched through the White House system and, thereafter, you came into the Office of the White House, according to the records, sometime around 10:49, I believe, somebody can correct me, and that you were there in the office maybe 10 minutes? Give us your best recollection as to the timeframe.

Ms. THOMASSON. Yes, sir. According to the records, I was paged at 10:34. According to the records, as I've heard here today, I was cleared into the White House at 10:49, then, once I got into Mr. Foster's office, I was there about 10 minutes, Senator Bryan.

Senator BRYAN. During this period of time, I take it there was some exchange or commiseration with Mr. Nussbaum, who you've described—my words perhaps not yours—as visibly distraught at the death of a close working colleague in the White House?

Ms. THOMASSON. Yes, sir. Briefly, when Mr. Nussbaum and I were on the first floor when I told him what my assignment was, I told him how sorry I was about Vince, and he just—Mr. Nussbaum really didn't talk very much that night. He just kept shaking his head and shaking his head.

Maggie Williams, however, when she and I were in Vince Foster's office together, we did talk about Vince and we talked about how helpful he always was to us and that no matter how com-

plicated we thought a problem might be, that Vince had a way to cut through all the chaff to get to the wheat fairly quickly. He was always very helpful to us and he always had a good way of thinking and approaching problems and so we were really going to miss him, not only as a friend, but as a colleague that we depended on regularly.

Senator BRYAN. Would it be fair to characterize the reaction as one of great shock?

Ms. THOMASSON. Absolutely, Senator.

Senator BRYAN. Was there considerable emotional trauma at having lost a colleague with whom you had a close working relationship professionally?

Ms. THOMASSON. Yes, sir. As I said earlier, it was the first time I had ever known anyone who committed suicide. I just can't imagine how bad things must have to get in your brain to commit suicide and to take your own life.

Senator BRYAN. Thank you very much, Ms. Thomasson.

Senator DODD. Would my colleague yield?

Senator BRYAN. Certainly. I'd be happy to.

Senator DODD. I'm curious. In your deposition you talked about the lights being on in the suite. You turned the lights on in Vince Foster's office when you went in or were the lights on?

Ms. THOMASSON. The lights were already on, Senator.

Senator DODD. When you walked in?

Ms. THOMASSON. As I recall, the lights were all on in the suite.

Senator DODD. Is it fluorescent lighting or is it table lights?

Ms. THOMASSON. Fluorescent lighting in those offices as I recall, sir.

Senator DODD. The briefcase was by the side of the desk?

Ms. THOMASSON. In the knee hole, sitting in the knee hole of the desk.

Senator DODD. You didn't pull it out. You just reached in or looked—did you pull it out?

Ms. THOMASSON. Pulled it out.

Senator DODD. You just thumbed through it—you didn't take documents out, I gather?

Ms. THOMASSON. I didn't take anything out of the briefcase.

Senator DODD. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Thomasson, earlier, David Watkins testified that Federal Judge Richard Arnold called him to recommend you for a job at the White House. Ms. Thomasson, why did Judge Arnold recommend you for a job at the White House?

Ms. THOMASSON. I don't know, Senator Faircloth.

Senator FAIRCLOTH. Do you know him?

Ms. THOMASSON. Yes, sir, I do.

Senator FAIRCLOTH. Was Judge Richard Arnold aware that you had worked for Dan Lasater for almost 10 years, as you've testified, and that Lasater had been convicted of cocaine distribution?

Ms. THOMASSON. I'm sure that Judge Arnold was aware of that.

Senator FAIRCLOTH. That you had worked for him for 10 years? I find the recommendation a little unusual.

You said earlier you had known President Clinton for almost 30 years?

Ms. THOMASSON. Since 1968.

Senator FAIRCLOTH. Did you ever discuss with President Clinton or Mrs. Clinton your search of Vince Foster's office?

Ms. THOMASSON. No, sir.

Senator FAIRCLOTH. You never discussed it with them?

Ms. THOMASSON. No, sir.

Senator FAIRCLOTH. They never discussed it with you?

Ms. THOMASSON. No, sir.

Senator FAIRCLOTH. It was a past issue, never brought up?

Ms. THOMASSON. I've never discussed it with either one of them.

Senator FAIRCLOTH. Did you discuss it with Bruce Lindsey?

Ms. THOMASSON. I don't recall having discussed it with Bruce Lindsey. I could have done that, but I don't recall that at this time, sir.

Senator FAIRCLOTH. If you don't recall whether you did or not, then you don't recall what you said to Bruce Lindsey, do you?

Ms. THOMASSON. I don't recall having talked to him about it, but that's not to say that I didn't.

Senator FAIRCLOTH. All right. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I don't think we have any further questions.

The CHAIRMAN. I want to thank you, Ms. Thomasson, for coming in. The Committee stands in recess——

Senator SARBANES. Mr. Chairman, before we recess, I think we ought to indicate on the record the constructive session that our counsel had with the counsel for President and Mrs. Clinton, their personal counsel, with respect to access to documents. I gather they got full access to the documents that they requested to review, and that——

The CHAIRMAN. They have reviewed them, I understand, and we are close to and hopefully can enter into an agreement stipulating the conditions under which we can obtain the necessary documents. We're working that out at the present time. I want to commend both counsels for their work, and hopefully we can resolve this and issue a statement this evening, or early tomorrow morning.

Senator SARBANES. It's my understanding that apparently the conclusion was reached that the redactions were made in good faith and that nothing mentioning Whitewater was redacted. I do understand that after further discussion in an effort to cooperate further, counsel has agreed to supplement the original production of the material with additional material.

The CHAIRMAN. That's correct.

Senator SARBANES. It's my understanding that the matter was worked out in a satisfactory way to counsel.

The CHAIRMAN. I believe that the matter is well on its way to being successfully resolved and the information that both counsels believe is pertinent will be made available and that it has been done in the proper manner. Certainly, we would thank the counsel, Mr. Kendall, for his cooperation. I think that's a fair statement. If that statement needs supplementation, I will make it.

Senator DODD. That's what I was going to ask about. Is it the intent at some point here in the next day or so, whenever——

The CHAIRMAN. I would hope by either this evening or tomorrow morning. But the bottom line is that I believe we have the basis of an agreement that will resolve the matter, and that the materials in question that we believe are appropriate will be made available. We want to add our thanks to the counsel, and certainly I think all parties have acted in good faith on this matter.

Senator DODD. I would hope as well—and I haven't had a chance to talk to Senator Sarbanes about this at all—because for the average citizen when they see a redaction and things crossed out, the assumption always is people are trying to hide something—in fact, that may be the case in some instances, but if that's not the case, I think it's important that we make that clear, too, so when people do see that, they understand——

The CHAIRMAN. That's what we want to do in the appropriate manner. That's why I appreciate the cooperation of counsel, because I think the matter was resolved in a manner which leaves no doubt that access has been provided even though any reasonable attorney might raise certain questions about to why it was not initially produced. We are satisfied that it has been produced in good faith we'll proceed from there. The Committee stands in recess. We'll reconvene at 9:30 tomorrow morning.

[Whereupon, at 4:57 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Wednesday, July 26, 1995.]

[Prepared statement and appendix supplied for the record follow:]

PREPARED STATEMENT OF MARK D. GEARAN

ASSISTANT TO THE PRESIDENT AND WHITE HOUSE DIRECTOR OF COMMUNICATIONS

JULY 25, 1995

Chairman D'Amato, Senator Sarbanes and Members of the Senate Special Committee, my name is Mark Gearan and I serve as Assistant to the President and Director of Communications at the White House. I have had the honor and privilege to serve the President and Vice President at the White House since Inauguration Day, January 20, 1993—first as Deputy Chief of Staff, then in June 1993 to the present as Director of Communications.

Mr. Chairman, there has not been a day during these past 2½ years when I have entered the gates of the White House without realizing the enormous privilege and responsibility of serving as a White House staff member. Mindful of the rich history and traditions which have preceded me and hopeful for the generations yet to come, I have endeavored to execute all my duties with that spirit and discharge all my responsibilities with integrity.

Named Director of Communications at the White House in June 1993, my duties were to explain and communicate the President's agenda and respond to press inquiries through formal press briefings as well as informal interviews.

As the Committee explores the events surrounding the death of Vincent Foster, I will share with you the perspective of one who lived through the shock of discovering that a colleague had taken his life.

Vincent Foster was known as a truly decent man. He worked hard. He excelled in his profession and was devoted to his family. While his death was a tremendous shock to me, I was also aware that this loss would be particularly felt by the President and Mrs. Clinton who had known Mr. Foster for many years, the many senior Administration officials who shared Vince Foster's Arkansas roots, and by Mr. Foster's family.

It is hard to find the words to convey the profound sense of shock and sadness that permeated the White House on the night of July 20, 1993, or to describe the enormity of the personal loss experienced by many of my colleagues who had known Vince Foster for many years.

On July 20, 1993, the day Vincent Foster took his life, and in the weeks that followed I provided information to the press, along with my colleagues. Today, like 2 years ago, I feel we have an obligation to do the best we can to provide the best information we have so that the public will be as completely informed as possible.

It is for that reason that I am appearing before this Committee, and hope to be as helpful as I can in your review of these issues.

Thank you.

APPENDIX

Z000140

- President's schedule
- Note about the "NW" article and the Columbia article
- Memo on change in summer clerk assign.
- Dee's Press Briefing
- Congress Daily
- Pres Trip Book
- WH Bulletin
- News Sum

- many credit card receipts

CALL NUMBER
PS301 [illegible]

RECEIVED

Z 000651

REDACTED

88271 Deleted by PAGER
88271 PLEASE CALL SIGNAL SWBD FOR CALL HOLDING WITH 11 17p0720FF2317072
88271DEE DEE MYERS
88271 Deleted by PAGER
88271PLS CALL INV BRAUN AT 202 690 5050 SIGNAL 12 57a0721SG0057072
88271 Deleted by PAGER
88271PLS CALL 202 456 7502 OP 12 04 18p0722SG1618072
88271 Deleted by PAGER

REDACTED

Ex-Clinton aide to tell of Foster 'burn bag'

Senate Whitewater hearings continue with focus on death of deputy counsel

By Jerry Seper
THE WASHINGTON TIMES

A former White House aide has told congressional investigators she was ordered to have a bag of documents burned after they were retrieved from a White House suite housing the office of Vincent W. Foster Jr. on the night of the deputy counsel's July 1993 death.

Sylvia M. Mathews said in a deposition that she was aware some of the documents in the bag were from the Foster office but that White House Counsel Bernard W. Nussbaum decided the papers were not relevant and ordered them destroyed.

Ms. Mathews, a White House special assistant at the time, now serves as chief of staff at the Treasury Department.

As the second week of special Senate Whitewater committee hearings gets under way today, Ms. Mathews is expected to be grilled by Republicans on the special committee — led by Sen. Lauch Faircloth of North Carolina — about the "burn bag" she retrieved from a cleaning crew after Mr. Foster's body was found in a Northern Virginia park.

The special committee also will ask other witnesses, including former top Clinton adviser David Watkins, why a White House aide with no security clearance was sent to search the Foster office the night of his death while U.S. Park Police were barred because of "national security" reasons.

"It's clear the committee will be looking to question White House aides very carefully on what happened to that bag, and why there were national security concerns about Park Police officers entering the office but no similar concerns about White House staff," said a source close to the committee.

Ms. Mathews, according to a summary of her committee deposition, told Senate investigators that after hearing no note was found with Mr. Foster's body on July 20, 1993, she retrieved the "burn bag" taken by a cleaning crew from the White House counsel's suite.

She said she took it to the office of Roy Neel, then the White House deputy chief of staff.

She told investigators Mr. Nussbaum was immediately notified that the bag had been recovered;

FOSTER

From page A1

he decided that because it had been not in Mr. Foster's office, but in the White House counsel's suite, it should be burned because of the "sensitivity of the documents."

Ms. Mathews said she was aware that some of the documents in the bag were credit card receipts from Mr. Foster. It was not clear yesterday, however, what specific papers from the Foster office would have been in the bag.

She also told investigators that Dee Dee Myers, White House press secretary at the time, was present when the bag was turned over to Mr. Neel.

Ms. Mathews declined comment yesterday pending the hearing.

Mr. Neel, who has since left government to become president of the U.S. Telephone Association, did not return calls to his office seeking comment.

Ms. Mathews was listed yesterday by Sen. Alfonse M. D'Amato, New York Republican and chairman of the special committee, on the first panel of scheduled witnesses. Other witnesses include Mr. Watkins, who resigned after it was publicized that he had used a presidential helicopter on a golf outing, and Mark D. Gearan, White House communications director.

Patsy L. Thomasson, who first searched the Foster office at Mr. Watkins' behest, also is expected to testify today about her role in searching the office four hours after Mr. Foster's body was found at Fort Marcy Park, off the George Washington Memorial Parkway just north of Arlington, in what federal authorities have ruled a suicide.

Park Police Detective Sgt. Cheryl A. Braun told the special committee last week that she had a "brief conversation" with Mr. Watkins about 11:10 p.m. on the night of the Foster death and asked the White House aide to see "that Mr. Foster's office was secured so we could send somebody out in the morning to check his office."

She said: "He acknowledged my request. I don't remember what his exact words were, but he acknowledged my request."

Sgt. Braun testified that Mr. Watkins never told her he already had asked Miss Thomasson, his deputy, to go into Mr. Foster's office and look for a suicide note, or that when her request was made, Miss Thomasson — who did not have a security clearance — had been in the office for 20 minutes.

WHITEWATER WITNESSES

The special Senate Whitewater committee is expected to hear testimony this week from the following witnesses:

- David Watkins, former assistant to the president for management and administration.
- Sylvia M. Mathews, Treasury Department chief of staff and former assistant to the special assistant to the president for economic policy.
- Mark D. Gearan, White House director of communications and strategic planning.
- Patsy L. Thomasson, former director of the Office of Administration at the White House and now deputy assistant to the president for presidential personnel.
- Margaret A. Williams, chief of staff to first lady Hillary Rodham Clinton.
- Evelyn S. Lieberman, deputy press secretary for operations and former asistant to Ms. Williams.
- Roger A. Adams, counsel to the deputy attorney general.
- Scott Salter, FBI special agent.
- Donald A. Flynn, U.S. Secret Service.
- Henry P. O'Neill, U.S. Secret Service.

The Washington Times

The park police called and Bill was on the phone with them. Dee Dee and David were in Mack's office too. I realized somewhere in the conversation, which I was hearing from one side, that there was no note found in the car. As a matter of fact, I think Bill asked the policeman.

I then asked the three of them if anyone had made sure that the trash had not been dumped in Vince's office. At that point Bill said we should get Bernie and lock the office. I am uncertain what time that was, but probably after 10pm. I don't remember who told Bernie, but he went up and locked the office.

During the evening, I don't recall anyone wondering around, especially on the second floor. As a matter of fact, I came upstairs to gather work to do while I was going to sit in Mack's office and was a bit spooked by the fact that I was all alone.

I said, I guess we should make sure the trash had not been dumped, and Bill agreed. I asked the cleaning ladies on the first floor and they said they had already dumped the trash. So I asked them where it was and they took me up to the second floor

Z 000464

Phil Heyman Phone Call - 11:45 AM 7/29

Janet + Phil Rec'd
- Leave the release to investigators
Park Police + FBI Field Office

They will look at circumstances
sending findings of note

- Can't promise when to release
- Send all estns to them a DOJ

Think chances are Park Police will
release in some time
if wrongdoing in finding note — will take back

authenticity of note + circumstances
under which it was found

Best guess - all goes forward ~~to~~
investigative suspicions if release today

Talking ~~to~~ Park Police - at high level [Jan Gilbert]

Made clear that WH wanted to know
if objection
Risk of release: it would arouse suspicion

There's a sense from Park Police + including
Phil + DOJ & probably Work Field Office
that too much of investigative meaning
b4, when; after - was exercised by
WH & those too close to Vince

Z 000465

(2)

power to exist suspicion

~~The complaint~~

I've had heated discussions on the way
docs were handled ≠ Berne
Janet Reno

- warned abt 4
- lateness of finding 9 note
- length of time in disclosure to us

Nobody believes there's anything but suicide

Odds against story in day/two on note

spicion story } ↳ 1 in 3 or 1 in 4 chances
Park Police or Wash Field Office.

If any sign of WH Counsel, COS people
anyone supervising closely their
asking asses - you'll see
all hell brake loose.

Best idea - release when investigators want

Display - openess to investigators

Z 000467

(4)

I learned that FBI Vilas
informed of document —

=

xo. We need if/when Park Police release,
notification for response

PH: Absolute - I'll set it up

=

When people come over to ask astros -
do so privately
& whatever they want.

=

PH. Docs. have been distributed
over my objections.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, JULY 26, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:45 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. We delayed a few minutes because we have a statement, which we touched on yesterday, both Senator Sarbanes and myself, about the agreement concerning—and we'll pass out a copy of it—the 40 pages or so approximately of redacted materials which have been mentioned.

On some pages there was written Whitewater, then there might be a page that was redacted and then you might have another mention of Whitewater and some notes, so the question was whether the materials that were redacted were relevant.

Senator Sarbanes and I agreed that we would have both counsels, Mr. Ben-Veniste and Mr. Chertoff, meet with the White House Counsel, Mr. Kendall. Mr. Kendall agreed—I want you to know he agreed to permit both counsels to review the documents in question to ascertain whether those materials were relevant. I have to say that they reached an agreement.

The counsel asked for the relevant materials and they have been made available to us. So, first of all, both counsels received all of the material, and both agreed on the relevancy. We have been provided many of those pages which were deemed relevant.

That's what took place, and I'll now give you the formal summary.

On Monday, Special Counsel for both the Majority and Minority of the Committee reached agreement with personal lawyers for the President and First Lady and were allowed full access to review the documents from Vincent Foster's office with those lawyers which have previously been redacted or withheld in response to this Committee's document request.

No mention of Whitewater had been redacted. In other words, where Whitewater was mentioned, there was no attempt to redact

that. The lawyers for the President and First Lady agreed to furnish the Committee with the additional material deemed relevant by one or both counsel.

We believe that the private lawyers made the original redactions in good faith, and indeed we had an opportunity to review all of the materials that were redacted, and those that were deemed to be relevant, as I've indicated, have been made available.

So they will be available to this Committee. I want to thank both of our counsels and Senator Sarbanes for having achieved this methodology of getting the information that we think is important.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I'd like to say that, first of all, I want to commend counsel, Mr. Chertoff and Mr. Ben-Veniste, for the very constructive way they were able to interact with Mr. Kendall, who's the personal lawyer for President and Mrs. Clinton.

As I understand it, our Counsel for the Special Committee did obtain full access to the documents they requested to review on Monday. As you note, we believe that the original redactions were made in good faith.

No mention of Whitewater had been redacted and I gather, after further discussion amongst counsel and the personal lawyer for President and Mrs. Clinton, it was agreed, in an effort at continued cooperation, that some additional material would be also provided to the Committee.

So I think this is a very positive and constructive outcome and I want to commend our counsel, both Mr. Chertoff and Mr. Ben-Veniste, for working this matter out in what I think is a very constructive and satisfactory way.

The CHAIRMAN. Our first panel is Henry P. O'Neill, U.S. Secret Service Uniformed Division, Department of Secret Service. Mr. O'Neill, would you stand to be sworn in.

[Witness sworn.]

Mr. O'Neill, if you have a prepared statement or you have any remarks at this time that you would like to make, we would be interested in receiving them. If not, we would proceed with the examination.

SWORN TESTIMONY OF HENRY PETER O'NEILL, JR. U.S. SECRET SERVICE UNIFORMED DIVISION DEPARTMENT OF SECRET SERVICE

Mr. O'NEILL. I would like to introduce myself to the panel.

The CHAIRMAN. Certainly.

Mr. O'NEILL. My name is Officer Henry Peter O'Neill, Jr. I work for the U.S. Secret Service Uniformed Division, and I have for the last 18½ years.

The CHAIRMAN. Mr. O'Neill, you're assigned to the White House?

Mr. O'NEILL. That's correct, sir.

The CHAIRMAN. How long have you been assigned to the White House?

Mr. O'NEILL. Since May 1977.

The CHAIRMAN. That's quite a period of time. You're still at the White House?

Mr. O'NEILL. I am, sir.

The CHAIRMAN. Thank you. Mr. O'Neill, I'm going to ask Mr. Chertoff to undertake some questions with you.

Mr. Chertoff.

Mr. CHERTOFF. Good morning, Officer O'Neill.

Mr. O'NEILL. Good morning, sir.

Mr. CHERTOFF. Can you tell us in 1993 what your assignment was at the White House?

Mr. O'NEILL. In 1993?

Mr. CHERTOFF. Right.

Mr. O'NEILL. In 1993, I was assigned to the White House branch and assigned to the midnight tour of duty. It begins at 2230 hours and ends at 0700 hours. For that particular year I primarily escorted the GSA cleaning people in the West Wing, along with other responsibilities of a response officer, and that's it.

Mr. CHERTOFF. I guess you've been in and around the White House for well over a decade?

Mr. O'NEILL. Yes, that's true.

Mr. CHERTOFF. I take it you're very familiar with the layout of the White House?

Mr. O'NEILL. I would hope so.

Mr. CHERTOFF. I'm going to ask to put up a little map we have of the interior of the White House, and I think maybe you can give us a little bit of a tour of a couple of the locations. You'll see it on your screen in front of you. This is going to be the second floor and just to be sure we're oriented in the correct manner, the bottom part to the left is the White House Counsel's suite.

So, orienting from that direction, we have Mr. Foster's office—Mr. Nussbaum's office and the reception area. Are you familiar with the layout of that suite of offices, the White House Counsel's suite?

Mr. O'NEILL. As it looks, I am familiar with that, yes.

Mr. CHERTOFF. I understand this is not a precise drawing, but is it roughly accurate?

Mr. O'NEILL. It is roughly accurate, yes. The elevators are where the stairs should be, it looks like.

Mr. CHERTOFF. I apologize. We did learn we had reversed the elevator and the stairs. Go ahead.

Mr. O'NEILL. The office itself looks correct.

Mr. CHERTOFF. If you were to exit from the suite and turn right going down the hall, what offices would you encounter?

Mr. O'NEILL. The particular offices to the right, as I would exit the suite?

Mr. CHERTOFF. Yes.

Mr. O'NEILL. You would have to continue down the hallway, and you would enter into a larger suite, and part of the Domestic Affairs Office to the President is housed in that area. The first office that you would reach on the right-hand side once you walked into the larger suite, in 1993 was Maggie Williams' office.

Mr. CHERTOFF. Now, I want you to focus your attention on the office that's directly to the right of the White House Counsel's suite before you get to the Domestic Policy area and Maggie Williams' suite. Am I correct that in 1993 those two offices were the First Lady's offices or her suite of offices?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Can we just go to the first floor schematic again? We're oriented in the same way as we were in the prior one, but we're on the first floor. Are we correct that the Chief of Staff's suite is in that corner down the hall from the Oval Office?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Would that be directly below where the White House Counsel's suite is?

Mr. O'NEILL. Yes, it is.

Mr. CHERTOFF. Thank you for the map.

Officer O'Neill, I'd like to take you back to July 20, 1993, which is the day on which it was learned that Mr. Foster had been discovered at Fort Marcy Park. Were you on duty that night?

Mr. O'NEILL. Yes, I was.

Mr. CHERTOFF. Were you, as part of your responsibilities that night, supposed to escort the cleaning personnel around the West Wing to collect both the trash and the burn bags?

Mr. O'NEILL. I was to escort the ladies in certain areas, yes, of the West Wing.

Mr. CHERTOFF. Can you move the microphone a little closer?

Mr. O'NEILL. Sure.

Mr. CHERTOFF. In terms of the way that the——

The CHAIRMAN. You can move that whole thing. Don't be afraid to pick it up.

Mr. O'NEILL. OK.

The CHAIRMAN. That's it.

Mr. CHERTOFF. In terms of the way the regular trash was picked up—I'm not talking about the burn bags now; the regular trash—what was the general procedure you followed or the cleaning people followed in handling that regular trash at that time?

Mr. O'NEILL. I'm sorry, you're going to have to repeat that.

Mr. CHERTOFF. I know this is an unaccustomed experience for you. Let's take it slowly. In terms of the regular trash, not the burn bags, what was the procedure that the cleaning people would follow in collecting the regular trash?

Mr. O'NEILL. When they entered an office, they would just go to the trash cans and pick the plastic liners out. They collect all the liners and then tie them and take them out into the hallway and put them in a larger bag, as far as I know.

Mr. CHERTOFF. In terms of the burn bags, who had responsibility at that time for emptying the burn bags?

Mr. O'NEILL. I had the responsibility to do that.

Mr. CHERTOFF. You would do that personally?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Now, on July 20, 1993—and we have to fix the time, it would be at 2242 which, I guess, is 10:42 in the evening in civilian time—do you recall entering the White House Counsel's suite with two cleaning people?

Mr. O'NEILL. I do recall, yes.

Mr. CHERTOFF. Who opened the suite at that time?

Mr. O'NEILL. I opened the door.

Mr. CHERTOFF. Who arranged to have the alarm secured or turned off?

Mr. O'NEILL. I did, sir.

Mr. CHERTOFF. How did you do that?

Mr. O'NEILL. Initially, when I unlock the door, I first make a radio transmission to the Uniformed Division Control Center, and they acknowledge it, and I unlock the door, and I walk in. I flip the light switch on in the reception area. Then I walk to the right into Mr. Foster's—at that time, the Deputy Counsel's Office, and behind the doorway there's an alarm switch, and you just flip the switch into access or open.

Mr. CHERTOFF. Am I correct that the normal way in which you set the alarm or unset the alarm is to flip that switch, and then either by radio or by telephone communicate with the Command Center to let them know who's entering or who's leaving?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Now, tell us what happened on that night immediately after you had opened the suite and let the cleaning personnel in.

Mr. O'NEILL. I immediately, as I said, put the lights on and then walked into the Deputy Counsel's Office. I flipped the switch and turned the lights on in that office. Then I walked into the Chief Counsel's Office and I put the lights on. I walked over to his desk, and I walked behind it and looked into the burn bag, and I looked at his desk. Then I walked out of that office back into the reception area or the secretary's area and I was standing there.

Mr. CHERTOFF. Then what happened?

Mr. O'NEILL. I was just standing, as I said before, talking to the cleaning women and I recognized Mr. Nussbaum as I turned to the right. He walked into his office and, just about the same time, I noticed other figures walk in behind him and I heard women's voices. So I directed the cleaning ladies to exit the suite, and I, too, left the suite.

Mr. CHERTOFF. Why did you do that?

Mr. O'NEILL. It's our practice that when the staff goes into their office to work, which is why I was thinking they were there, I direct the staff outside or the cleaning crew outside. It's just a practice that we do.

Mr. CHERTOFF. Just keeping your attention focused on that initial period of time, do you recall whether there were one or two people who went in with Mr. Nussbaum?

Mr. O'NEILL. At this time, I can only say that I know that one person went in behind.

Mr. CHERTOFF. You're not sure if it was one or two?

Mr. O'NEILL. Not exactly sure at this time.

Mr. CHERTOFF. Were you able to see the people at that point in time who were accompanying Mr. Nussbaum?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Did you hear their voices, one or more voices?

Mr. O'NEILL. I did.

Mr. CHERTOFF. Were they male or female voices?

Mr. O'NEILL. Female.

Mr. CHERTOFF. During the period of time before Mr. Nussbaum entered, had you an opportunity to go into Mr. Foster's office and look at his burn bag?

Mr. O'NEILL. No, sir, I didn't.

Mr. CHERTOFF. Do you know whether at that time Mr. Foster customarily kept a burn bag in his personal office?

Mr. O'NEILL. I know for a long period of time it was a custom for a burn bag to be in the Deputy Counsel's Office, and I cannot recall whether or not Mr. Foster had a burn bag in his office.

Mr. CHERTOFF. But you know you didn't check it that night?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Did you check the burn bags in the outer office that night before Mr. Nussbaum came in?

Mr. O'NEILL. As far as I recall, I did, yes.

Mr. CHERTOFF. Do you remember whether you removed anything from those?

Mr. O'NEILL. If there was anything in them, I would have taken it, yes.

Mr. CHERTOFF. Now, in terms of the trash removal, do you know whether the cleaning people were able to remove the trash from Mr. Foster's personal office that night before you escorted them out?

Mr. O'NEILL. I don't recall the cleaning ladies entering that office that night.

Mr. CHERTOFF. Do you recall the cleaning ladies emptying the trash from the outer office?

Mr. O'NEILL. I do recall that they were collecting the trash, yes.

Mr. CHERTOFF. After you had escorted the cleaning personnel out of the office, you left yourself; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Where did you go?

Mr. O'NEILL. I walked directly away from the Counsel's Office, down the hallway, and I walked into another office around the corner to the left.

Mr. CHERTOFF. Whose office was that?

Mr. O'NEILL. It was the Offices of the Chief Legislature Division.

Mr. CHERTOFF. Did you see anybody there?

Mr. O'NEILL. No one.

Mr. CHERTOFF. Did you encounter anybody at this period of time in the hallway?

Mr. O'NEILL. Yes. When I came back around the corner from that office or that suite of offices, I encountered Howard Pastor.

Mr. CHERTOFF. Who is Howard Pastor?

Mr. O'NEILL. He is—he was the Chief Legislative Affairs Officer for the President.

Mr. CHERTOFF. What did you say to him and what did he say to you?

Mr. O'NEILL. Actually, we looked at each other and, as far as I recall, we said hello to each other. I looked at him, and he looked like he was upset to me. His head was down as he stood in the hallway. He wasn't standing there talking to anyone. He was just standing by himself. I asked him if there was anything wrong, and he mentioned to me, he said yes, a terrible thing has happened, and he said that Vince—I'm quoting him—he said Vince Foster had killed himself, and I said I'm shocked. I was sorry to hear that sad news.

Mr. CHERTOFF. What did you do then?

Mr. O'NEILL. I just walked on past him, and I walked toward the Chief Counsel's suite again, and I spoke to a woman who was

standing outside. She was standing outside the suite, and she had actually just walked out.

Mr. CHERTOFF. Standing outside of which suite?

Mr. O'NEILL. The Chief Counsel's suite of offices.

Mr. CHERTOFF. That's the White House Counsel's?

Mr. O'NEILL. Yes.

Mr. CHERTOFF. Do you know who that woman was?

Mr. O'NEILL. At that time, I did not know who she was.

Mr. CHERTOFF. Have you later learned who she was?

Mr. O'NEILL. Yes, I have.

Mr. CHERTOFF. Who is that woman?

Mr. O'NEILL. Her name is Evelyn Lieberman.

Mr. CHERTOFF. When you saw her coming out of the suite and in the vicinity of the suite, did you have a conversation with her?

Mr. O'NEILL. We did have a conversation.

Mr. CHERTOFF. Tell us about that.

Mr. O'NEILL. We looked at each other and she spoke to me. As far as I can recall, she asked me about locking up the office, and I said I would take care of it. That was the extent of the conversation.

Mr. CHERTOFF. Where did you go?

Mr. O'NEILL. I intended to go downstairs to the ground floor. I got on the elevator, and she got on the elevator and we went down there together. We spoke a little bit on the elevator. She asked me my name, and I remember her—she introduced herself to me.

Mr. CHERTOFF. Then what happened?

Mr. O'NEILL. We got off on the ground floor in the west basement, and there's a post officer sitting there. She went directly to him and spoke to him, and I overheard her say something about locking up the office. I used the telephone; I called my lieutenant to inform him of the information I had just learned from Mr. Pastor. I finished the phone call with him, and I stood there and spoke with the officer on post. His name was James Shea, and he mentioned the request made by Ms. Lieberman and I said I was aware of the request and that I was going to take care of that.

Mr. CHERTOFF. When you say the request, you mean the request to lock up the office eventually?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Now, did there come a point after that conversation that you went back up to the White House Counsel's suite?

Mr. O'NEILL. Yes, there was.

Mr. CHERTOFF. Tell us about that.

Mr. O'NEILL. First, I took a little time before I went back up there.

Mr. CHERTOFF. What did you do?

Mr. O'NEILL. I spoke with Officer Shea for a few moments. Then I went to the ground floor, spoke with Officer Debellis at the Oval Office and informed him of the information that I had learned about Mr. Foster. I just remembered that there was White House staff in and around the Chief of Staff's Office, Mr. McLarty's office. A few more moments had passed by, and I returned to the second floor. I reentered the Counsel's suite, and I walked directly into the Deputy Counsel's Office, who was Mr. Foster at the time, and I stopped in the doorway, immediately walking into the office be-

cause, as I looked to the left, there was a woman sitting at the desk.

Mr. CHERTOFF. What was she doing?

Mr. O'NEILL. She was looking down, just as I am here, looking down. She looked as if she was reading something.

Mr. CHERTOFF. What did you do?

Mr. O'NEILL. I immediately backed out of the office.

Mr. CHERTOFF. What was the reason you went up to the White House Counsel's suite at that point?

Mr. O'NEILL. I went back there to lock the room.

Mr. CHERTOFF. Did you recognize the woman sitting behind Mr. Foster's desk?

Mr. O'NEILL. No, I did not.

Mr. CHERTOFF. Did you later learn who she was?

Mr. O'NEILL. Yes, I did.

Mr. CHERTOFF. Do you now know her identity?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. What is her identity?

Mr. O'NEILL. Her name is Patsy Thomasson.

Mr. CHERTOFF. Did Ms. Thomasson look up when you came to the door?

Mr. O'NEILL. No, she didn't.

Mr. CHERTOFF. What did you do after you saw her in Mr. Foster's office? Where did you go?

Mr. O'NEILL. I went out again into the hallway, and the first thing that I was thinking about was letting the cleaning people know that they wouldn't be going back into the office. That was a responsibility that I felt I had to do, and I located the lady that was actually in charge of cleaning the office and told her.

Mr. CHERTOFF. Then what happened?

Mr. O'NEILL. I was down on the first floor again, in the lobby. This is where I first encountered Sylvia Mathews, just a greeting, and some time went by before I returned for the third time to the office, the Chief Counsel's Office.

Mr. CHERTOFF. Why did you go back?

Mr. O'NEILL. To lock it up.

Mr. CHERTOFF. What did you see when you arrived back at the White House Counsel's suite?

Mr. O'NEILL. I just remember—as best as I can recall, I was standing in the hallway, and it's not the hallway directly that leads past the elevator on that one diagram; it's the hallway that leads east on the second floor.

Mr. CHERTOFF. Is that the hallway that leads toward Maggie Williams's office?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Would it help you if we put the diagram up?

Mr. O'NEILL. Yeah, it could. It wouldn't help me, but it may help you.

Mr. CHERTOFF. Let's put it back up. I need all the help I can get. You're telling us you were in the hallway that would be between the left- and the right-hand lower portion of the diagram?

Senator FAIRCLOTH. Mr. Chairman, would it help us all if somebody wrote on that piece of paper where Maggie Williams' office is?

Mr. CHERTOFF. That's not a bad idea. Maybe we can get our operator to—why don't we do that after the witness is done.

Senator FAIRCLOTH. I don't go to the White House very often.

Mr. O'NEILL. There's a pointer on there—if you go to the right more, next office. That's it.

Mr. CHERTOFF. That's Maggie Williams' office?

Mr. O'NEILL. Leave that there, and I'll go down the hallway now, and I'll point out where I was. Out of the office. That's in the office. OK, there in the hallway, right there, that's exactly where I was standing.

Mr. CHERTOFF. Great. Terrific. Tell us what happened.

Mr. O'NEILL. I saw Evelyn Lieberman walk out of the Counsel's suite. She stood in front of the doorway and I looked at her and, again, locking the office was mentioned. Then, a few seconds after I saw her come out, Mr. Nussbaum walked out behind her and walked through the hallway, toward the stairs, past the elevator and, within a few more seconds, I saw Maggie Williams walk out of the suite and turn to the right in the direction that I was standing.

Mr. CHERTOFF. Did she walk right by you?

Mr. O'NEILL. Yes, she did.

Mr. CHERTOFF. Was she carrying anything?

Mr. O'NEILL. Yes, she was.

Mr. CHERTOFF. What was she carrying?

Mr. O'NEILL. She was carrying what I would describe, in her arms and hands, as folders. She had them down in front of her as she walked down to her—in the direction of where I was standing.

Mr. CHERTOFF. Where did she go?

Mr. O'NEILL. She walked past me, and she continued on down the hallway. It's only about 20 feet at the most. She started to enter her office, and she had to brace the folders in her arm on a cabinet, and then she entered the office and came out within a few more seconds and locked the door.

Mr. CHERTOFF. Locked the door to her office?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Then what happened?

Mr. O'NEILL. She walked, again, toward me down the hallway toward Evelyn Lieberman, and I went in right behind her after she walked past me and locked the office, locked the suite of offices up. We rode the elevator down to the first floor, and they got off and went to the Chief of Staff's Office.

Mr. CHERTOFF. Now, I just want to take it step by step at the end here. After Maggie Williams had dropped off whatever she was carrying in her office, she came back by you and met Evelyn Lieberman and they went off to the elevator and you went and locked the door?

Mr. O'NEILL. It all happened, basically, at the same time, sir. I'm very fast at locking up the office, and by the time I had completed locking the office they were on the elevator there, and I just got on and went down.

Mr. CHERTOFF. Did you have any conversation with Ms. Williams or Ms. Lieberman at this point when they were coming out of the suite ultimately to go to the elevator?

Mr. O'NEILL. When Maggie Williams did walk out of the office and walk in my direction, Ms. Lieberman said that's Maggie Williams; she's the First Lady's Chief of Staff. I just said I know, and I looked at her and she looked at me, and she smiled and walked past me.

Mr. CHERTOFF. Keeping your attention on this particular couple of moments, Mr. Nussbaum came out of the White House Counsel's suite before Ms. Williams did; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. In what direction did he go off?

Mr. O'NEILL. I went away from the—he went to the north hallway down the stairs.

Mr. CHERTOFF. You were the one who actually locked up the suite?

Mr. O'NEILL. Yes, that's correct.

Mr. CHERTOFF. Which you had promised to do when Ms. Lieberman had asked you earlier that evening; right?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. For the record, we have on Z598 a record at 2341, which is 11:41 in the evening civilian time, that you had locked it up and contacted the Control Center indicating you were locking it up for the night.

Mr. O'NEILL. At 11:41 hours, yes, sir.

Mr. CHERTOFF. Now, after that event, did there come a time when you had some discussion with Sylvia Mathews concerning a burn bag?

Mr. O'NEILL. Yes—yes, sir.

Mr. CHERTOFF. Tell us about that.

Mr. O'NEILL. I was directed to respond to the Chief of Staff's Office, Mr. McLarty's office, with the burn bag. This was—I was directed by the Control Center, Uniformed Division Control Center people that evidently had received a phone call. They directed me to the Chief of Staff's Office.

Mr. CHERTOFF. That's on the first floor?

Mr. O'NEILL. That's on the first floor.

Mr. CHERTOFF. You brought a burn bag with you?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Now, is that what has been described as a commingled burn bag, meaning a burn bag that has within it collections from a number of individual offices?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. They were all in one single large bag?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. What did you do with it?

Mr. O'NEILL. I just handed it to her.

Mr. CHERTOFF. What happened?

Mr. O'NEILL. She took it inside the office. I continued on my way.

Mr. CHERTOFF. Did you see it again or have any further discussion about it?

Mr. O'NEILL. I was called a short time later, and I went and retrieved the bag for Sylvia Mathews in Mr. McLarty's office.

Mr. CHERTOFF. Were you given any instructions about what to do with the bag at that point?

Mr. O'NEILL. No, sir.

Mr. CHERTOFF. What did you do with it?

Mr. O'NEILL. I did what I normally do with it, continued on if I needed to go collect some other burn, then I take it and secure it in another area.

Mr. CHERTOFF. As far as you know, it was disposed of in the normal manner?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. I want to go back to the period of time that you were in the White House Counsel's suite and I just want to direct you to the issue of burn bag material in that suite. Am I correct that you were the person who was authorized to clean out the burn bag material in the West Wing?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. It was not the cleaning people?

Mr. O'NEILL. Not at all.

Mr. CHERTOFF. When you were in the suite earlier that evening before Mr. Nussbaum first came in, you indicated you had looked into Mr. Nussbaum's burn bag?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Then you indicated Mr. Nussbaum came in and you left with the cleaning people?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. During that period of time, did you remove any burn bag material from Mr. Foster's office or from the outer office in the White House Counsel's suite?

Mr. O'NEILL. I think I stated that I did not go into Mr. Foster's office, and that if there were or was any burn material in the bags in the secretary—or, as you have it on your diagram, reception area, if there was burn material there, I would have collected it.

Mr. CHERTOFF. Is your recollection, though, that at the point at which you brought the burn bag back to Ms. Mathews, that you had not, in fact, had any burn material that you had removed from the White House Counsel's suite that night?

Mr. O'NEILL. I cannot recall if I did collect the burn material from the secretary's area. If there had been burn material there, and I had time to collect it, I would have.

Mr. CHERTOFF. Mr. O'Neill, is there anything else that you can recall about the events of that period of time between 9:45 and 10:45 relating to people coming in or out of the White House Counsel's suite apart from what you've told us?

Mr. O'NEILL. No, sir, not at all.

Mr. CHERTOFF. Am I correct that you have no difficulty in your own mind telling the difference between the White House Counsel's suite and the First Lady's suite?

Mr. O'NEILL. I have absolutely no problem with that, determining which office is which.

Mr. CHERTOFF. Would you agree with the record of the White House Security Control Center that it was you personally who both opened the suite that night and, perhaps more important, that it was you personally who locked the suite that night?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes, and good morning, Officer O'Neill.

Mr. O'NEILL. Good morning, sir.

Mr. BEN-VENISTE. You have worked for the Uniformed Secret Service for approximately 18 years, sir?

Mr. O'NEILL. That's correct, sir.

Mr. BEN-VENISTE. During that time, could you give us briefly the different positions that you've held and the promotions you've received?

Mr. O'NEILL. The particular positions I've held, I've been a uniformed officer. During the time I've worked at the White House, I've had many responsibilities, many jobs, just in the lineup officers. I was a tour officer for several years. I've just worked many important events that is the normal course of any day.

Mr. BEN-VENISTE. Have you been a supervisor at any point? Have you received any promotions?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. Basically, you have performed the same functions that you have described here this morning over that 18-year period?

Mr. O'NEILL. Not working in the West Wing for 18 years, no, sir.

Mr. BEN-VENISTE. So you moved to the West Wing when?

Mr. O'NEILL. You move in and out of the different positions. It depends on the manpower. It depends on your seniority.

Mr. BEN-VENISTE. In 1993, how long had you been assigned to the West Wing?

Mr. O'NEILL. I had been assigned there for 3 years.

Mr. BEN-VENISTE. You had basically been performing the functions of escorting the GSA cleaning crew into secure offices for that 3-year period since 1990?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Now, Officer O'Neill, did you make any notes or reports of the events that you've testified about here this morning?

Mr. O'NEILL. Would you repeat the question, sir?

Mr. BEN-VENISTE. Did you make any notes or reports of the events which you have testified that you witnessed here this morning?

Mr. O'NEILL. No, I did not.

Mr. BEN-VENISTE. When was the very first time that you recounted to any person, a supervisor, anyone from the Secret Service, anyone from the FBI, any of the things that you have testified about here this morning?

Mr. O'NEILL. It was 9 months later, in April 1994 to the FBI.

Mr. BEN-VENISTE. What was the occasion for your having been interviewed by the FBI in April 1994?

Mr. O'NEILL. I was directed by a supervisor to respond to the Office of the Independent Counsel.

Mr. BEN-VENISTE. Which Independent Counsel was that at the time, do you remember?

Mr. O'NEILL. Independent Counsel—Mr. Fiske, I think.

Mr. BEN-VENISTE. Do you recall the names of the individuals who interviewed you?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. But they were FBI agents?
Mr. O'NEILL. Correct.
Mr. BEN-VENISTE. Assigned to Mr. Fiske?
Mr. O'NEILL. That's correct.
Mr. BEN-VENISTE. Did they take notes?
Mr. O'NEILL. Yes, they did.
Mr. BEN-VENISTE. Now, you may be aware that the Independent Counsel has declined our request to produce the notes of your interviews by the FBI, but at some point we will be receiving them. Those will undoubtedly be made part of the record. Let me ask you at this time whether in your April 1994 interview by the FBI agents working under the supervision of Robert Fiske you told the story that you told here this morning?
Mr. O'NEILL. That's absolutely correct.
Mr. BEN-VENISTE. Exactly as you told it here this morning, sir?
Mr. O'NEILL. I think it may be a little clearer.
Mr. BEN-VENISTE. It might have been even clearer then?
Mr. O'NEILL. I've gone over this quite a bit in my mind.
Mr. BEN-VENISTE. Now, I'm asking you in April 1994 whether you provided the details that you have testified to here this morning to the FBI?
Mr. O'NEILL. Yes, sir, that's correct.
Mr. BEN-VENISTE. There came a time when you were reinterviewed by the FBI; isn't that so?
Mr. O'NEILL. Yes, it is.
Mr. BEN-VENISTE. When was that?
Mr. O'NEILL. It was shortly after that. I don't know exactly what day it was. It was shortly thereafter, maybe 2 weeks.
Mr. BEN-VENISTE. Two weeks thereafter?
Mr. O'NEILL. Yes, sir.
Mr. BEN-VENISTE. Were you interviewed again?
Mr. O'NEILL. I certainly was, yes.
Mr. BEN-VENISTE. When was that, sir?
Mr. O'NEILL. It was probably—maybe a few weeks later. I don't recall this, sir, how long in between. I just know that it was several times.
Mr. BEN-VENISTE. A few weeks after, so you're now into May or June, perhaps, of 1994. That was the third time you were interviewed?
Mr. O'NEILL. Yes, sir.
Mr. BEN-VENISTE. You told the story exactly as you have told it here this morning again?
Mr. O'NEILL. I don't know how else to tell it, sir.
Mr. BEN-VENISTE. We don't have access to those notes at this point, so I'm asking——
Mr. O'NEILL. I told it the same way as I told it today.
Mr. BEN-VENISTE. There was nothing different between the first time you told it, the second time you told it and the third time you told it?
Mr. O'NEILL. Only that I didn't realize the names of the people.
Mr. BEN-VENISTE. You didn't know the names of the people?
Mr. O'NEILL. I didn't know, originally, Patsy Thomasson or Evelyn Lieberman. I did know Maggie Williams and I knew Mr. Nussbaum.

Mr. BEN-VENISTE. Other than that, you told the same story exactly the same all three times?

Mr. O'NEILL. Correct.

Mr. BEN-VENISTE. When was the next time you were interviewed by the FBI?

Mr. O'NEILL. I think I finished up the testimony in September.

Mr. BEN-VENISTE. September of what year, sir?

Mr. O'NEILL. 1994.

Mr. BEN-VENISTE. You testified, you say?

Mr. O'NEILL. My deposition was completed, and I went over it with one of the—a lawyer and Agent Bill Colombell of the FBI.

Mr. BEN-VENISTE. You say your deposition was completed. Who took a deposition of you in September 1994?

Mr. O'NEILL. As far as I know, it was a compilation of all the interviews that I had given.

Mr. BEN-VENISTE. A compilation?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. That was in a sworn statement with a stenographer?

Mr. O'NEILL. No, that was not the case, no.

Mr. BEN-VENISTE. What do you mean by——

Mr. O'NEILL. It was an interview that I completed. They actually wrote everything down and I read it.

Mr. BEN-VENISTE. You used the term, a "deposition."

Mr. O'NEILL. I thought it was a deposition.

Mr. BEN-VENISTE. So you gave a statement which was transcribed?

Mr. O'NEILL. Yes, it was.

Mr. BEN-VENISTE. You read it?

Mr. O'NEILL. Yes, it was.

Mr. BEN-VENISTE. Were you allowed to read it?

Mr. O'NEILL. Yes, I was.

Mr. BEN-VENISTE. Were you allowed to make any corrections?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. Just to read it?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Were there corrections you wanted to make?

Mr. O'NEILL. No.

Mr. BEN-VENISTE. So that was the fourth time, to your recollection?

Mr. O'NEILL. I think, approximately, yes.

Mr. BEN-VENISTE. You say it was a compilation, sir. What was there to compile if you had told the same exact story three times previously?

Mr. O'NEILL. It was the fact that I might have remembered something a little clearer after I had been interviewed the first time.

Mr. BEN-VENISTE. What was the thing that you remembered a little bit clearer?

Mr. O'NEILL. I found out the names of the people by looking at photographs.

Mr. BEN-VENISTE. Anything else that you remembered a little bit clearer?

Mr. O'NEILL. No, there isn't.

Mr. BEN-VENISTE. So it was the same exact story for the fourth time with the addition of the names of certain of the people; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Were you interviewed again by the FBI?

Mr. O'NEILL. Not that I recall.

Mr. BEN-VENISTE. Have you given this story to the Independent Counsel on some other occasion after September 1994?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. You're sure about that?

Mr. O'NEILL. The Independent Counsel—this Independent Counsel?

Mr. BEN-VENISTE. Any Independent Counsel. We now have four times that you have given this story. Would it help your recollection if I were to suggest to you that in your deposition you thought you had given the story five times to FBI agents?

Mr. O'NEILL. I didn't keep count of it. Every time I was called, I responded. Every time I responded, I gave the same story.

Mr. BEN-VENISTE. So it may have been another time, but you're not remembering right here that you gave the same story?

Mr. O'NEILL. There may have been.

Mr. BEN-VENISTE. Did you testify on any occasion?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. You never were called before a Grand Jury?

Mr. O'NEILL. One time I was called, and that was——

Mr. BEN-VENISTE. That's testifying, when you go before a Grand Jury?

Mr. O'NEILL. That was just recently.

Mr. BEN-VENISTE. We're counting just recently. I'm taking you right up until today.

Mr. O'NEILL. It was April 19—I was back in 1993 with the other side, the other people talking to me, the other——

Mr. BEN-VENISTE. I'm trying to find out how many times you have told this story before today.

Mr. O'NEILL. I was before the Grand Jury in April 1995.

Mr. BEN-VENISTE. That's the fifth time you've told the story; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Before you testified in April 1995, were you interviewed?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. So you went from September 1994, if I understand your testimony, to April 1995 without anyone questioning you or being interviewed about——

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. You're firm about that?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. What is the difference between the Uniformed Secret Service and the Secret Service agent?

Mr. O'NEILL. There's an agent sitting right beside me. Maybe he could describe that to you, sir. His name is Tim Foley.

Mr. BEN-VENISTE. Good morning, Mr. Foley, but today it's your turn to testify, Mr. O'Neill.

Mr. O'NEILL. There's not much difference.

Mr. BEN-VENISTE. Not much difference?
Mr. O'NEILL. Not to me there isn't.
Mr. BEN-VENISTE. Are the functions any different?
Mr. O'NEILL. Of course, they have the field offices throughout the country where they work, forgery, and many varied administrative and investigative cases.
Mr. BEN-VENISTE. They are distinct branches. One day you're not a Secret Service agent and the other day you're a uniformed officer; correct?
Mr. O'NEILL. No, sir.
Mr. BEN-VENISTE. Am I correct that they are distinct?
Mr. O'NEILL. I think they are distinct.
Mr. BEN-VENISTE. Training is different, their functions are different?
Mr. O'NEILL. Yes, sir.
Mr. BEN-VENISTE. OK. Now, let me go to July 20, 1993 with you. What time did you arrive at work that day?
Mr. O'NEILL. At approximately—July 20th?
Mr. BEN-VENISTE. Yes, sir.
Mr. O'NEILL. Approximately 6 p.m.
Mr. BEN-VENISTE. 6 p.m. Was that a normal time for you to arrive on your shift?
Mr. O'NEILL. It was not exactly normal. It was early.
Mr. BEN-VENISTE. It was early?
Mr. O'NEILL. Yes.
Mr. BEN-VENISTE. Why were you there early that day?
Mr. O'NEILL. I was working overtime.
Mr. BEN-VENISTE. Someone told you to come in and work overtime?
Mr. O'NEILL. It was voluntary.
Mr. BEN-VENISTE. You just showed up?
Mr. O'NEILL. No. It was a voluntary request. If anyone wanted to come in early, they could.
Mr. BEN-VENISTE. So you came in early. How long had you been coming in early on your shift in July before the 20th?
Mr. O'NEILL. Not that often. Occasionally.
Mr. BEN-VENISTE. Do you remember?
Mr. O'NEILL. I'd have to look at maybe a calendar or go back and find——
Mr. BEN-VENISTE. As a matter of fact, the first time you gave your version of events in April 1994, did you remember that you had worked an extra shift?
Mr. O'NEILL. Came in early that time?
Mr. BEN-VENISTE. Yes.
Mr. O'NEILL. No, I didn't.
Mr. BEN-VENISTE. So when you told your version of the events in April 1994, it was inaccurate to the extent that you hadn't remembered that you came in early. How early did you come in that day?
Mr. O'NEILL. Four hours earlier.
Mr. BEN-VENISTE. Four hours. You were off on the first time you explained when you came in that day; correct?
Mr. O'NEILL. You're going to have to repeat your question.

Mr. BEN-VENISTE. When you explained to the FBI in April 1994 what time you started your shift, you were 4 hours off; is that right?

Mr. O'NEILL. I don't recall saying I was 4 hours off to anyone.

Mr. BEN-VENISTE. I didn't say you would have said you were 4 hours off. I am suggesting to you that you didn't recall at that time that you had come in 4 hours early and, therefore, in your report about what happened that evening, you were 4 hours off as to when you started?

Mr. O'NEILL. I still don't recall saying that to anyone.

Mr. BEN-VENISTE. When did you learn that you had worked the extra 4 hours? When did it occur to you in telling anyone about the events of that evening that you had worked the extra 4 hours?

Mr. O'NEILL. I think during the subsequent interviews.

Mr. BEN-VENISTE. Somewhere along interviews two, three, four, five?

Mr. O'NEILL. No, I think it was the next one or perhaps the one after that.

Mr. BEN-VENISTE. Either interview two or three, you remembered that fact?

Mr. O'NEILL. It wasn't so much that I remembered it. It was that——

Mr. BEN-VENISTE. That somebody put a record in front of you and said hey, you worked overtime that day. You reported 4 hours earlier; correct?

Mr. O'NEILL. That was only because I felt I didn't know—when I called the lieutenant and notified him of the information about Mr. Foster that I had learned from Mr. Pastor, the information that I did not know of his death, when the lieutenant spoke to me on the telephone he said he was already aware of it and, therefore, I realized that it had been passed along at rollcall——

Mr. BEN-VENISTE. I'm only asking you, Officer——

Mr. O'NEILL. I'm only telling you what I feel is important.

Mr. BEN-VENISTE. But I'm only asking you——

The CHAIRMAN. Richard, this is not a cross-examination, so let's let him finish his answer, OK, and then——

Mr. BEN-VENISTE. Most respectfully, Mr. Chairman, it is a very important issue.

The CHAIRMAN. It is important and I will give you—Richard, it's important. I will give you great latitude, but let's let him finish his question and if you need clarification, you can go back to it.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

You may answer about Mr. Pastor.

Mr. O'NEILL. I'm finished with that answer, sir.

Mr. BEN-VENISTE. The point of my question was whether someone provided you with a record that showed you that you had come in 4 hours earlier that day?

Mr. O'NEILL. I can't recall that.

Mr. BEN-VENISTE. How did you remember that you had come in 4 hours earlier?

Mr. O'NEILL. I checked on it myself.

Mr. BEN-VENISTE. So you looked at a record?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. How many days had you been working extra shifts prior to the 20th?

Mr. O'NEILL. I've been working overtime for—many times over the course of my career.

Mr. BEN-VENISTE. Now, what I'm trying to focus on, and I think you touched on it in your deposition, if you recall, how many days prior to the 20th you had been coming in 4 hours earlier?

Mr. O'NEILL. Maybe once or twice that week, sir.

Mr. BEN-VENISTE. "That week"—the 20th was what day of the week, if you remember?

Mr. O'NEILL. I don't recall.

Mr. BEN-VENISTE. When does your week start or did you have a day off?

Mr. O'NEILL. You're talking over 2 years ago. I don't recall this information.

Mr. BEN-VENISTE. I understand. It is a long time ago. It would be hard to remember those kind of details.

Mr. O'NEILL. That particular detail, yes.

Mr. BEN-VENISTE. So you may have been working a couple of days before the 20th on this extra shift, coming in 4 hours earlier; is that——

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. With respect to that 4 hours, what did you do on the 20th in the 4 hours from 6:30 until your normal start time of 10:30?

Mr. O'NEILL. I think I worked either in the mansion or on the north grounds.

Mr. BEN-VENISTE. Either you worked inside or outside?

Mr. O'NEILL. I can't recall that either.

Mr. BEN-VENISTE. You have no recollection of what you did specifically during that 4-hour period?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. The fact is that you didn't remember what time you saw Mr. Pastor that evening, when you say you saw him at about 11 p.m., without being able to look at the electronic records of when the White House Counsel's Office was open that evening; is that correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. So when you testified that you saw Howard Pastor, you are operating within a 1-hour period that you know the White House Counsel's Office was open, and taking that information, you're trying to break it down into what happened during that hour. Is that fair to say?

Mr. O'NEILL. It's fair to say, yes, sir.

Mr. BEN-VENISTE. So you had to account for 1 hour somehow; correct?

Mr. O'NEILL. I had to account——

Mr. BEN-VENISTE. In other words, in terms of your recollection, you had to figure out what happened during that hour, and you've apportioned events that occurred during that hour according to the time records that suggest that the office was open for 1 hour?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. Now, you indicated that the first time you saw Mr. Nussbaum that evening was some point after you had opened the office to let the cleaners in; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Now, what time did the cleaners normally go in that office?

Mr. O'NEILL. Whenever the officer opens the door, unlocks the door for them.

Mr. BEN-VENISTE. Was there not a routine, Mr. O'Neill?

Mr. O'NEILL. Yes, sir, there is a routine.

Mr. BEN-VENISTE. What did that routine call for?

Mr. O'NEILL. Once the rollcall was completed, the officer responded to the second floor. That was the first alarmed room that was opened for the cleaning crew.

Mr. BEN-VENISTE. So every evening the White House Counsel's Office would be the first office for the cleaning crew; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. What was the second office opened every evening, according to that routine?

Would someone be kind enough to put the second floor West Wing chart up on our screen. Thank you.

My question is, Officer O'Neill, what was the second secured office, according to your routine, that was cleaned on the second floor of the West Wing of the White House?

Mr. O'NEILL. There was a room to the right. You have your dot. Do you want to use your dot?

Mr. BEN-VENISTE. It's not my dot, but if there's someone there with a dot, perhaps that dot could be—it's the Committee's dot?

Mr. O'NEILL. Right there. Exactly there. That's the room.

Mr. BEN-VENISTE. Whose room was that?

Mr. O'NEILL. That's the Clinton Office, the reception office.

Mr. BEN-VENISTE. That was the reception area of Mrs. Clinton's office?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. So when you first saw Mr. Nussbaum enter the office, you believe you saw a woman follow him in?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. When you saw Mr. Nussbaum enter the Counsel's suite, where did he go with the woman who followed him?

Mr. O'NEILL. He went into his office, inside.

Mr. BEN-VENISTE. He went into his own office, according to your testimony?

Mr. O'NEILL. Yes, sir, his own office.

Mr. BEN-VENISTE. He was followed by a second person whom you believe to have been a woman?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Did you see that person at the time?

Mr. O'NEILL. I saw a woman. I saw a figure of a person.

Mr. BEN-VENISTE. A figure of a person?

Mr. O'NEILL. That's true.

Mr. BEN-VENISTE. Where were you standing at the time you saw Mr. Nussbaum enter his office?

Mr. O'NEILL. Standing inside the secretary's area.

Mr. BEN-VENISTE. Where about in the secretary's area? Do we have that? Where about?

Mr. O'NEILL. Right about there.

Mr. BEN-VENISTE. Right about there. So Mr. Nussbaum would have had to come, essentially, right past you to walk into his office?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. So would the woman who was following him?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. But you only saw what?

Mr. O'NEILL. I saw Mr. Nussbaum enter his office and then I saw what I have described as figures—I said figures enter his office behind him.

Mr. BEN-VENISTE. Figures?

Mr. O'NEILL. That's what I said. I may have, in my original testimony, which I don't have a copy of——

Mr. BEN-VENISTE. Which original testimony?

Mr. O'NEILL. To the FBI. The first time that I was interviewed, I may have recalled that I said women.

Mr. BEN-VENISTE. Women?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. Now, upon reflection, you think figures is the more accurate way to describe what you saw?

Mr. O'NEILL. It's difficult, sir. It's difficult for me to remember.

Mr. BEN-VENISTE. OK. I accept that. But you're sure it's plural?

Mr. O'NEILL. Yes.

Mr. BEN-VENISTE. You saw Mr. Nussbaum and two figures enter Mr. Nussbaum's office; correct?

Mr. O'NEILL. As best I can recall, it's either one or two.

Mr. BEN-VENISTE. Either one or two additional figures?

Mr. O'NEILL. Yes.

Mr. BEN-VENISTE. Where were the GSA cleaners at that time?

Mr. O'NEILL. The GSA cleaning women—one was further to the back of the room, right there, and the other was moving in and around the door. I don't know exactly where the other one was.

Mr. BEN-VENISTE. The door to the Counsel's suite?

Mr. O'NEILL. Yes.

Mr. BEN-VENISTE. So Mr. Nussbaum and one or two figures would have had to essentially brush right past?

Mr. O'NEILL. Exactly.

Mr. BEN-VENISTE. The second of the cleaners——

Mr. O'NEILL. As far as I can recall, yes.

Mr. BEN-VENISTE. Is it your recollection that the cleaners started in the reception area that evening?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. They never went into Mr. Foster's office?

Mr. O'NEILL. That's my recollection, sir.

Mr. BEN-VENISTE. You recognize now, do you not, that the cleaners testified that not only did they go into Mr. Foster's office, but that they had removed the trash from Mr. Foster's office?

Mr. O'NEILL. I never spoke to them.

Mr. BEN-VENISTE. Let me see whether this would refresh your recollection, sir. I am referring to the testimony taken of Terry Lynnette Cobey on July 14, 1995 by this Committee at page 27. Mr. Chertoff asks:

Question: Do you know whether there was a lock on Mr. Foster's office?
Answer: No. The door was open because I went in there and I pulled the trash.

Does that refresh your recollection?

Mr. O'NEILL. Would you please repeat that to me? I had to confer with my counsel.

Mr. BEN-VENISTE. The GSA cleaner testified that on July 20, 1993, Mr. Foster's office was not locked, and that the door was open. She went in there and pulled the trash from the office. Does that refresh your recollection that maybe you have things mixed up?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. The testimony which we have received here is that Mr. Foster's trash was retrieved from a larger receptacle of trash on the evening of July 20, 1993, so clearly the trash was collected. Does that refresh your recollection as to whether the cleaners had been in Mr. Foster's office and not where you have remembered them to be in your testimony this morning?

Mr. O'NEILL. No, it does not.

Mr. BEN-VENISTE. All right. Let's proceed. At the point that Mr. Nussbaum went into his office, you retreated from the suite?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. You asked the GSA cleaning people to follow you; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. You never went back into that suite to perform any other function that evening; that's correct?

Mr. O'NEILL. That's incorrect.

Mr. BEN-VENISTE. Other than to lock the door?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. OK. But you say that you looked in and dumped Mr. Nussbaum's burn bag; is that correct?

Mr. O'NEILL. That's not correct.

Mr. BEN-VENISTE. Did you?

Mr. O'NEILL. No, I didn't.

Mr. BEN-VENISTE. You did not look at Mr. Nussbaum's burn bag. You did not say that in response to Mr. Chertoff's question just 15 minutes ago?

Mr. O'NEILL. I said I looked at the burn bag. I did not say I dumped the burn bag.

Mr. BEN-VENISTE. When did you look at the burn bag?

Mr. O'NEILL. When I walked into his office.

Mr. BEN-VENISTE. So you walked into his office and without—strike that.

You walked into his office; you looked in the burn bag. Was there material in the burn bag?

Mr. O'NEILL. I don't recall if there was or not.

Mr. BEN-VENISTE. If there was, you would have dumped it?

Mr. O'NEILL. Yes.

Mr. BEN-VENISTE. That would have happened before the cleaners—strike that.

That would have happened before Mr. Nussbaum arrived in the office?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. But you say you didn't look in Mr. Foster's office for his burn bag?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Why was that?

Mr. O'NEILL. It's just the way I did it.

Mr. BEN-VENISTE. But you're certain of that?

Mr. O'NEILL. As far as I can recall, that's the way I did it, yes.

Mr. BEN-VENISTE. Did you have a normal procedure where you would look at Mr. Nussbaum's burn bag first and then you would look at Mr. Foster's?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Then you would look at the reception area?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. I see that my light is on.

The CHAIRMAN. If you have—Richard, if you have another area—have you finished that?

Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman and Mr. O'Neill. Good morning. I have some good news: I'm not an attorney. But I'll try to do the best that I can.

I'd like to go back—and I know you've already testified on this, but I just want to clarify some of the movements by some of the people, including yourself, that night. I'd like to really begin about the time you returned back to the White House Counsel's suite and you walked in and you saw who you now have identified as Patsy Thomasson sitting behind Vince Foster's desk, looking down, apparently reading something, according to your testimony; is that correct?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. You had gone back up to the office for what purpose, just, again, to check whether it was ready to be locked? You had mentioned that you felt it should be locked and the cleaning people should not be allowed back in; is that correct?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. As you walked in, you noticed her reading and you just backed out again and left the suite?

Mr. O'NEILL. Yes, that's correct.

Senator GRAMS. From that point, did you return to the ground floor? I know I'm confusing you because I'm picking this up in midstream.

Mr. O'NEILL. I may have, yes.

Senator GRAMS. What I was wondering is did you see Ms. Thomasson again?

Mr. O'NEILL. Yes, I did.

Senator GRAMS. Where was she standing the next time you saw her or you remember seeing her?

Mr. O'NEILL. She was standing in the doorway on the ground floor of Mr. Watkins' office.

Senator GRAMS. She had now left the White House Counsel's suite, and the next time you saw her she was down on the first floor in Mr. Watkins' office doorway?

Mr. O'NEILL. That's correct.

Senator GRAMS. About what time was that? Do you remember how much time had elapsed from the time you left the White House Counsel's suite and saw her reading, and you must have done some other duties or chores, and then ran into her again?

Mr. O'NEILL. It was just after I had locked the Counsel's Office on the second floor. I had come down on the elevator, and I was standing with the other officer on the post when I saw her.

Senator GRAMS. When you returned upstairs and saw Evelyn Lieberman standing in the doorway of the White House Counsel's suite, what did you do next? You had mentioned when you saw her, she had appeared to be coming out of the office and positioning herself in the doorway?

Mr. O'NEILL. That's correct.

Senator GRAMS. Would that be like she was going to be standing there as a sentry, so to speak, as she made that motion or movement to stop there?

Mr. O'NEILL. I have no idea, sir. I just saw her standing there.

Senator GRAMS. What was she doing, just standing there?

Mr. O'NEILL. That's all. She was walking out. She was walking out of the office.

Senator GRAMS. She talked back into the office as if somebody was still in the office, that you recall?

Mr. O'NEILL. I cannot recall, sir.

Senator GRAMS. Did you speak with her at that time again?

Mr. O'NEILL. I may have made eye contact or——

Senator GRAMS. But you're sure it was Evelyn Lieberman?

Mr. O'NEILL. Yes, sir, I am.

Senator GRAMS. This is the same woman you had rode in the elevator with earlier that night, minutes before?

Mr. O'NEILL. Yes, that's the same woman.

Senator GRAMS. You couldn't have confused her with anybody else? I ask you this because Ms. Lieberman denies that this incident happened, but you recall that very distinctly because you had just ridden in the elevator with her. You were sure of who this woman was?

Mr. O'NEILL. If she denies it, I don't know what to say.

Senator GRAMS. Did you see Mr. Nussbaum leave the White House Counsel's suite?

Mr. O'NEILL. Yes, I did.

Senator GRAMS. Had Ms. Lieberman left at that time?

Mr. O'NEILL. No, she was standing right outside the door in the hallway.

Senator GRAMS. So you saw Mr. Nussbaum leave before Ms. Lieberman left? He left, and she was still there?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. It was at that time that Maggie Williams then came out of the office?

Mr. O'NEILL. That's correct.

Senator GRAMS. She had in her hands a stack of which you have testified looked like files?

Mr. O'NEILL. That's true.

Senator GRAMS. Something that took both hands to hold, so, I mean, it was a stack? Not just one or two pieces of paper, but actually a stack of files?

Mr. O'NEILL. Yes, it was.

Senator GRAMS. You're sure it was Maggie Williams; you knew who she was before she was introduced to you?

Mr. O'NEILL. Yes, I did.

Senator GRAMS. She walked down to her office. You even testified that she had to brace the files up against—what she had in her hand up against something as she opened the door?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. She went into her office, came back a few seconds later, and then locked the office before she left? Then she came back past you in the hallway?

Mr. O'NEILL. As best I can recall, that's what happened.

Senator GRAMS. Did you notice what the files said, by the way?

Mr. O'NEILL. I have no idea at all. I have no idea what they were.

Senator GRAMS. I ask you this because, I mean, you've been around the White House for many years; you've been in the West Wing; you knew the routine; you knew the people there. This was an unusual happening and something that you recollect very clearly?

Mr. O'NEILL. I would say only because of the fact that the Deputy Counsel—the events surrounding the Deputy Counsel's death that I remember this.

Senator GRAMS. Could you have been confused in any way about what office she walked into or took those files to?

Mr. O'NEILL. No, sir.

Senator GRAMS. So she took the files into her office. Was she holding anything when she came out?

Mr. O'NEILL. Not that I recall—not that she had in her arms, at least.

Senator GRAMS. You're aware now that Ms. Williams claims she never took anything out of the White House Counsel's Office?

Mr. O'NEILL. I'm aware of that, yes.

Senator GRAMS. Again, I want to go back to just clarify who asked you to lock up. Again, who asked you? It appears to me through your testimony this morning that the request was made at least twice and by the same person; is that correct?

Mr. O'NEILL. Yes.

Senator GRAMS. Ms. Lieberman?

Mr. O'NEILL. Yes.

Senator GRAMS. Is that the person who asked?

Mr. O'NEILL. That's correct.

Senator GRAMS. Did you see Ms. Williams and Ms. Lieberman leave the second floor of the West Wing?

Mr. O'NEILL. Yes, I did.

Senator GRAMS. Then you locked up the White House Counsel's suite after that?

Mr. O'NEILL. That's correct.

Senator GRAMS. You alarmed the suite; you were the one responsible for that. I'd like to put up the records again to verify, if I could, just the records of that 2242—which, again, is 10:42 in the evening—according to the record, it was you, Officer O'Neill, who took off the alarm in order to allow the cleaning people in. That

was the reason that the alarm was disarmed at that time; is that correct? Just a routine evening of cleaning people coming in?

Mr. O'NEILL. Yes, sir, that's correct.

Senator GRAMS. How long were you in that office before Mr. Nussbaum came in? Just a few minutes?

Mr. O'NEILL. Yes, sir, just a matter of moments.

Senator GRAMS. According to your testimony, it appeared they came in as a group, I would say, because you noticed him and at least a figure or two passed by with him and into his office; is that correct?

Mr. O'NEILL. I can only recall seeing him very clearly walk into his office and seeing figures move in behind him because I turned away and I only saw them with my peripheral vision.

Senator GRAMS. But they all went into his office——

Mr. O'NEILL. That's correct.

Senator GRAMS. —first of all. At that time, then, what you thought was correct procedure, you asked the cleaning people to leave, to give them privacy as they had returned to work?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. All this happened about an hour later, 59 minutes later. As you testified, you sealed the office—or set the alarm and walked out?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. I just wanted to ask this because there's testimony that Patsy Thomasson says it was Bernie Nussbaum. Ms. Williams doesn't recall. Bernie Nussbaum says it was Bernie Nussbaum, but you have testified and the records show that it was actually you, Officer O'Neill, who secured the office that night?

Mr. O'NEILL. Right.

Senator GRAMS. So if there's any confusion in recollection, you don't believe it's on your part?

Mr. O'NEILL. Not with who locked up the office at that time. There was no one in the office when I locked it.

Senator GRAMS. But Mr. Nussbaum had left previously and had left the two ladies behind?

Mr. O'NEILL. That's correct.

Senator GRAMS. So it was Ms. Williams who was the last person you saw exit the White House Counsel's suite that night?

Mr. O'NEILL. Yes, sir.

Senator GRAMS. Just a couple of other quick questions. How long do you think it was that the individual or individuals were in the White House Counsel's suite that night from the time Mr. Nussbaum first entered the office—which was shortly after it was open at 10:41, so he could have been there at 10:45?

Mr. O'NEILL. That's correct.

Senator GRAMS. So you assumed they had been in there at least, I would say, 55 minutes before Ms. Williams, who was the last to exit, and you immediately secured the alarm, which was at that time 11:42. So if somebody was in there, it was for about an hour that they occupied the office?

Mr. O'NEILL. I would just characterize it as I opened it at 10:40 and locked it up at 11:40. Those are approximate times, and I saw who went in, and I saw who came out. That's all I know.

Senator GRAMS. But Mr. Nussbaum came in shortly after you opened up, and you locked it up right after you saw Ms. Williams leave? They requested you lock the suite, and you did?

Mr. O'NEILL. That's correct.

Senator GRAMS. So that's about an hours time. Are you aware that you're the only one who's testified you opened and closed it again, you're aware of that?

Mr. O'NEILL. No, sir.

Senator GRAMS. Because you don't know what the other testimony has been. But one other question. I want to take you downstairs quickly. You gave the burn bag, you said, to Sylvia Mathews, who was in the Chief of Staff's Office at the time. Did she request you to bring the burn bag to her?

Mr. O'NEILL. She didn't request. The request was made by the Control Center.

Senator GRAMS. To bring the burn bag to the Chief of Staff's Office and give it to Ms. Mathews?

Mr. O'NEILL. It was—my direction was to take the burn bag to the Chief of Staff's Office.

Senator GRAMS. Then how long was it before you returned to retrieve the burn bag?

Mr. O'NEILL. I can't recall. It wasn't that long. It was maybe within a half hour or so.

Senator GRAMS. Do you know if anybody else was in the Chief of Staff's Office with Ms. Mathews, did anybody else have the opportunity to go through that burn bag?

Mr. O'NEILL. I could not say for sure, sir.

Senator GRAMS. You know you delivered it to her and you came back and retrieved it, but you don't know who had the opportunity to be in the Chief of Staff's Office and, along with at least Ms. Mathews, to go through the contents of the burn bag?

Mr. O'NEILL. Would you please repeat your question?

Senator GRAMS. What I'm saying is you brought the burn bag, by request of the Control Center, to the Chief of Staff's Office. You handed it to Sylvia Mathews?

Mr. O'NEILL. Yes.

Senator GRAMS. Then you left. You came back, retrieved the bag again, from Sylvia Mathews, but you have no idea who else was in the office, who else may have had an opportunity to go through the burn bag. Was it just Ms. Mathews, or were there other people in the——

Mr. O'NEILL. No, I wouldn't know. I wouldn't really know who else was in there with that bag. I wouldn't know.

Senator GRAMS. But there could have been others in the room that examined the contents?

Mr. O'NEILL. I would think there were other people there, yes.

Senator GRAMS. Thank you, Mr. O'Neill. I don't have any other questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Kerry.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator. Officer O'Neill, where I left off, you had ordered the GSA cleaners to leave Mr. Nussbaum's

suite of offices. You testified, I believe, that you went down the hallway following that. Do you recall that?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. What was your purpose in going down the hallway?

Mr. O'NEILL. My purpose was to continue on my duties.

Mr. BEN-VENISTE. Can we have the chart put back up again so that we can all follow along? Now, you indicated that your regular schedule, your routine was then to clean the next office from the White House Counsel's Office—I mean, accompany the people who were going to clean the office next to the White House Counsel, and that would have been in the Office of the First Lady. If we could have a dot appear?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. I could get used to this dot.

The CHAIRMAN. I like the dots.

Mr. BEN-VENISTE. However, you testified in response to Mr. Chertoff's question on the evening of the 20th you departed from your routine, and you went to the Office of the Chief of the Legislative Division. Why did you do that?

Mr. O'NEILL. That's just the course that I took, sir.

Mr. BEN-VENISTE. You just remembered that that evening you felt like departing from routine; there wasn't any reason for it?

Mr. O'NEILL. Not that I could recall.

Mr. BEN-VENISTE. Do you recall whether there was someone sitting in the Office of the First Lady at the time that you left Mr. Nussbaum's suite of offices on the 20th, and if that's the reason why you did not enter that office?

Mr. O'NEILL. I can only say that I don't recall if there was someone sitting in that office at that time.

Mr. BEN-VENISTE. You have absolutely no recollection?

Mr. O'NEILL. Not at this time, I do not have any recollection.

Mr. BEN-VENISTE. But under your normal routine, you would have gone with the cleaners to the First Lady's Office to empty the trash, have them clean the office, et cetera; correct?

Mr. O'NEILL. That is correct.

Mr. BEN-VENISTE. Now, when you first testified about the introduction by Evelyn Lieberman of Margaret Williams, you didn't say that she was introduced as the Chief of Staff to the First Lady, did you?

Mr. O'NEILL. I didn't say that? Is that what you're asking?

Mr. BEN-VENISTE. Do you recall?

Mr. O'NEILL. I remember her saying that she was an Assistant to the First Lady.

Mr. BEN-VENISTE. Did you testify that Evelyn Lieberman introduced Margaret Williams to you as a Secretary to the First Lady the first time you testified about this, at least before the Senate?

Mr. O'NEILL. No, I don't recall that. I may have said secretary.

Mr. BEN-VENISTE. That would be at page 172 of Officer O'Neill's deposition. See if this helps your recollection:

Question: She said that, that's Maggie Williams, the First Lady's Secretary?
Answer: Right.

Since your deposition you have learned that Margaret Williams is the Chief of Staff to the First Lady, so you have incorporated

that information into the testimony you gave this morning, that Maggie Williams was introduced to you by Evelyn Lieberman as the Chief of Staff to the First Lady; correct?

Mr. O'NEILL. She referred to her as an Assistant to the First Lady. I remember that when she first said who she was.

Mr. BEN-VENISTE. So that when you testified today that she introduced her as Chief of Staff, that isn't really what she said that night, is it, as far as what you recall?

Mr. O'NEILL. It's close to it as——

Mr. BEN-VENISTE. When you testified?

Mr. O'NEILL. It's close to.

Mr. BEN-VENISTE. Close to?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. But amended by information that you have received since you first explained this event; correct?

Mr. O'NEILL. No, it's just amended that that's her title.

Mr. BEN-VENISTE. Now, you saw Mr. Pastor in the hallway; correct?

Mr. O'NEILL. Correct.

Mr. BEN-VENISTE. What happened to cleaning the Office of the Chief of the Legislative Director? Did you go there, clean it and then see Mr. Pastor, or did you abandon the idea to go to the Chief of the Legislative Director after you changed your routine and did not seek to clean the Office of the First Lady?

Mr. O'NEILL. I didn't clean anyone's office.

Mr. BEN-VENISTE. I understand that. Accompany the cleaners.

Mr. O'NEILL. I don't have to accompany them in that area.

Mr. BEN-VENISTE. I'm sorry; I don't understand your answer. You're saying that the cleaners went off to another location without you?

Mr. O'NEILL. That is probably the case, yes.

Mr. BEN-VENISTE. Do you remember?

Mr. O'NEILL. Once they exited Mr. Nussbaum's office, I have no real reason to be with them at that time until we go into another secure room.

Mr. BEN-VENISTE. Like the First Lady's room next door?

Mr. O'NEILL. That would be correct.

Mr. BEN-VENISTE. You simply have no recollection of what happened, with respect to the cleaners, next. Isn't that so?

Mr. O'NEILL. No, I don't have any recollection of that.

Mr. BEN-VENISTE. Now, you say that after you spoke to Mr. Pastor, Evelyn Lieberman said to you as you met her in the hallway that she would like you to arrange for locking the office; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Did she tell you which office she was referring to, to the best of your recollection?

Mr. O'NEILL. Would you repeat the question, sir?

Mr. BEN-VENISTE. Did she tell you what office she was referring to when she said that she wanted assistance in locking an office?

Mr. O'NEILL. To the best of my recollection, she just said lock the office.

Mr. BEN-VENISTE. You made the assumption without her saying so that she was referring to the White House Counsel's Office?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. You've testified that you did not know that Evelyn Lieberman had been sitting at the reception area in the First Lady's Office; correct?

Mr. O'NEILL. I testified that I didn't know if Evelyn Lieberman was sitting at the desk in the First Lady's reception area?

Mr. BEN-VENISTE. Yes. Did you see her sitting there?

Mr. O'NEILL. Not that I recall.

Mr. BEN-VENISTE. OK. So you don't know whether she was referring to locking the First Lady's Office as compared with the Counsel's Office. Is that so?

Mr. O'NEILL. No, sir. I knew where she was talking about.

Mr. BEN-VENISTE. She was talking about locking an office that, to the best of your knowledge, had Mr. Nussbaum, who was resident in that office, and two other people in it; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. She wasn't suggesting that you lock them in at that point, was she?

Mr. O'NEILL. I doubt it.

Mr. BEN-VENISTE. You doubt it. It wouldn't make any sense. So according to your interpretation of what she said to you, rather than locking the First Lady's Office, she was talking about locking an office where there were people still meeting; correct?

Mr. O'NEILL. She asked me to lock the office.

Mr. BEN-VENISTE. Let me go to the question of Patsy Thomasson. You said at some point you returned to the Counsel's Office and you saw Patsy Thomasson sitting at Mr. Foster's desk looking down; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Where were you standing? If we could call upon the mover of the dot.

Mr. O'NEILL. Up a little bit, a little more. Right there.

Mr. BEN-VENISTE. You had walked to the entranceway of Mr. Foster's office at that point?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Now, was the door all the way open, partially open or mostly closed?

Mr. O'NEILL. To that office?

Mr. BEN-VENISTE. To Mr. Foster's office.

Mr. O'NEILL. It was all the way open.

Mr. BEN-VENISTE. You looked at Mr. Foster's desk, which is approximately where the end of the line connecting the name Vincent Foster is; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. If someone was sitting on the sofa, which is against the other wall, would you necessarily have seen that person?

Mr. O'NEILL. Which wall are you talking about?

Mr. BEN-VENISTE. The wall to the right. Isn't that where the sofa is in Mr. Foster's office, if you recall?

Mr. O'NEILL. If I recall, I believe that I would have recognized it if someone were sitting there.

Mr. BEN-VENISTE. Do you recall that there was a sofa against that wall?

Mr. O'NEILL. At some point in time, they would move the furniture around on occasion.

Mr. BEN-VENISTE. In July 1993, was there a sofa against that wall?

Mr. O'NEILL. I can't recall.

Mr. BEN-VENISTE. At your point of view, you saw Ms. Thomasson, whom you didn't know at the time, at the desk, and you quickly withdrew; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. As soon as you saw her, you withdrew; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Why was that?

Mr. O'NEILL. Because I thought it was Mr. Foster's wife.

Mr. BEN-VENISTE. At the time that you saw her, you were under the impression that, given the information you had received from Mr. Pastor, it was possible that this could have been Mr. Foster's wife, and you quickly withdrew because you did not want to intrude on her?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. I see my time is up.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I'm just going to take a minute, Mr. Chairman. I want to focus your attention on the questions Mr. Ben-Veniste asked you just a moment or so ago about locking up the office and the request to you by Evelyn Lieberman to lock up the office.

Now, when you were up at the White House Counsel's Office for the third time, standing in the hallway to the right of the office, right there, you indicated you saw Mr. Nussbaum walk out of the office; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. You saw Ms. Lieberman out in front of the office; correct?

Mr. O'NEILL. She was the first one out of the office at that time.

Mr. CHERTOFF. Then came Mr. Nussbaum?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. He walked away?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Then Maggie Williams came out?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Then Ms. Lieberman asked you after they were all out to lock the office door; correct?

Mr. O'NEILL. No, she didn't really ask me then. She may have asked me. She may have said it again, to lock the office, but I was—my intention was—that—was to lock the office, yes.

Mr. CHERTOFF. To lock the office after you had seen Ms. Lieberman come out, Mr. Nussbaum leave, and finally Ms. Williams come out?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. At that point, the office was empty?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Now, one last question. When you locked up the office to the White House Counsel's suite at the request of Ms. Lieberman after they had left and headed to the elevator, there

wasn't anybody else in view that could have come and locked that office up besides you; correct?

Mr. O'NEILL. No, sir.

Mr. CHERTOFF. Because Mr. Nussbaum had gone?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. OK.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you. Thank you, Mr. Chairman.

Mr. O'Neill, in your deposition, I believe dated June 23, 1995, the one I'm referring to, among other things, I believe the question was:

Question: Go ahead. You went back up to the Counsel's Office and you said 'they were,' and I interrupted you.

This is your answer:

Answer: Well, I just remember being in the hallway, and I was talking to—I never went back into the suite, and I noticed Ms. Lieberman standing there.

Question: Standing where?

Answer: Standing right outside the doors of the Chief Counsel's Office, and I think she was talking, and they was talking back into the office. She went back and walked into the office. I didn't see her again, and then she came back out, and right after I saw Mr. Nussbaum come out. And he walked away, and he walked down the steps as far as I remember, and then I saw Maggie Williams come out, and both women were standing there.

Do you remember this?

And then I saw Maggie Williams come out, and both women were standing there. And Ms. Lieberman mentioned to me that she wanted the room locked, same thing counsel—I said OK. Then she said, this is Maggie Williams. She was walking by me at that moment with—I mean, she was just walking by me. She was carrying something.

Question: Who was carrying something?

Answer: Mrs. Williams.

Question: What was she carrying?

Answer: I just remember she was carrying files, and that's how I described it, folders on top of each other.

Question: Could you—approximately what was the volume of folders that she was carrying? Was it sort of a big pile or a little pile?

Answer: It was more than a little. It wasn't an enormous amount, but it was more than a little.

Question: Was she carrying it in one hand or two?

Answer: She was carrying it in two hands as if there was some weight to it.

My question to you, sir, were they files like this, if you'll recall? Was she carrying it with both hands like there was some weight to it?

Mr. O'NEILL. That's correct.

Senator SHELBY. That's your judgment?

Mr. O'NEILL. That's my judgment.

Senator SHELBY. Would it be more than this? Heavier? I mean, you know——

Mr. O'NEILL. It may have been a little bit more.

Senator SHELBY. A little more?

Mr. O'NEILL. Somewhere in that—right about there.

Senator SHELBY. Somewhere about this size. Was she carrying it with both hands, as you said?

Mr. O'NEILL. Yes. I recall that she was carrying it with both hands.

Senator SHELBY. Now, you know—strike that.

Did you know Maggie Williams by name before this time?

Mr. O'NEILL. Yes, I did.

Senator SHELBY. You knew where her office was, didn't you?

Mr. O'NEILL. I did.

Senator SHELBY. You had been seeing her since she came to work in January there in the White House?

Mr. O'NEILL. I had seen her on occasion in the West Wing.

Senator SHELBY. During your duties as a——

Mr. O'NEILL. Yes, sir.

Senator SHELBY. —Secret Service agent?

Mr. O'NEILL. Secret Service officer.

Senator SHELBY. Officer.

Mr. O'NEILL. Yes, sir.

Senator SHELBY. If Mrs. Williams says—and this is her testimony—"I took nothing from Vince's office. I didn't go into Foster's office with anything in mind concerning any documents that might be in his office. I did not look at, inspect or remove any documents," she's mistaken, is she not, from what you saw?

Mr. O'NEILL. I think I heard you say she didn't take anything from the office.

Senator SHELBY. That's what she's saying; she didn't. Yet you just testified that you saw her take documents at least the size of these, holding them with both hands, out of the office into her office; is that correct?

Mr. O'NEILL. I testified that I saw her walk out of the Chief Counsel's suite.

Senator SHELBY. With what?

Mr. O'NEILL. With what I would consider folders in her arms.

Senator SHELBY. About the size of these?

Mr. O'NEILL. That was it.

Senator SHELBY. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Let me go back a little bit, Officer O'Neill. Mr. Ben-Veniste described a number of occasions on which you've given interviews to the FBI, and I believe on one occasion you indicated you reviewed certain matters that had been transcribed, and he described it as telling your story.

Did you regard your responses to questions by the agents and your interviews as telling a story or simply responding to questions?

Mr. O'NEILL. I guess a little bit of both, sir.

Mr. CHERTOFF. You were telling what you remembered?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Now, you still work at the White House?

Mr. O'NEILL. Pardon me?

Mr. CHERTOFF. You still work at the White House?

Mr. O'NEILL. Yes, I do.

Mr. CHERTOFF. I imagine that there have been times since you were first interviewed about the events of this night that you have wondered whether you would have been better off if you had had a lapse of memory about these events. Is that probably something that's crossed your mind?

Mr. O'NEILL. Not until right now, sir.

Mr. CHERTOFF. It's fair to say that this process of being interviewed and testifying is not a pleasant experience?

Mr. O'NEILL. No.

Mr. CHERTOFF. You weren't looking for the opportunity to be here today instead of being at home watching it or watching something more interesting on television, were you?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. But, nevertheless, you told each of the agencies or prosecutors or lawyers or investigative bodies that asked you questions what you remembered; right?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Now, let me ask you something about your memory in general about this night. You've indicated to us that you don't necessarily remember the specific times that everything happened. Is it fair to say that you do have a good memory of the sequence of events, to use a term a witness used yesterday?

Mr. O'NEILL. To the best of my knowledge, I have a pretty good idea of it.

Mr. CHERTOFF. You may not know exactly what time, but you know the order in which it occurred; right?

Mr. O'NEILL. To the best of my ability, I knew—the testimony I've given is as accurate as I know.

Mr. CHERTOFF. Mr. Ben-Veniste asked you questions about when you started your shift that day and where you were at 6 p.m., and I guess we could ask you questions about what you had for breakfast that morning and whether there was traffic on the way to the White House. Your understanding is that kind of information was not important to the investigators who were asking you questions; right?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. You understood they were focused on the period of time in the White House during the hour or two that we've been asking most of the questions about?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Let me, finally, just ask you a question about the trash. Mr. Ben-Veniste read you testimony from another witness—and I'm sure you haven't seen that testimony before—from one of the cleaning crew indicating that she had removed the clear plastic bag of trash from Mr. Foster's office, and I believe your testimony is you don't remember that the cleaning lady went into the office; is that correct?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. You did not, I take it, follow the cleaning ladies around all over the place within the suite?

Mr. O'NEILL. No, sir.

Mr. CHERTOFF. Is it fair to say you didn't see her go in the office; right?

Mr. O'NEILL. It's fair to say that.

Mr. CHERTOFF. But you're not in a position to tell us whether she went in at a point that you didn't see; she could have gone in and you may not have seen her?

Mr. O'NEILL. That's true.

Mr. CHERTOFF. On the other hand, when you're testifying about what you observed with respect to Patsy Thomasson, what you ob-

served in terms of Bernie Nussbaum, what you observed and saw with Maggie Williams, those are things you saw with your own eyes?

Mr. O'NEILL. Yes, that's correct.

Mr. CHERTOFF. In those instances, your memory is based upon your direct personal observations of the events?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator DODD. Mr. Chairman, I'm going to yield time to my colleague, Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you, Senator Dodd.

Mr. O'Neill, following up on the questions, if I may, of Mr. Chertoff on memory and observation, as an officer of the law and as a person responsible for security, you're trained to be observant, are you not?

Mr. O'NEILL. Yes, sir.

Senator KERRY. In effect, the goings on in and out are your business, are they not?

Mr. O'NEILL. I would think so, yes.

Senator KERRY. But it's fair to say that your memory of that evening is really not that clear, isn't it, in many regards?

Mr. O'NEILL. Sure.

Senator KERRY. You never told anyone in the Secret Service of the specific observations about Ms. Williams and Mr. Nussbaum that you've related in your depositions and to the Committee, did you?

Mr. O'NEILL. No, sir.

Senator KERRY. You never said anything to any friends, did you?

Mr. O'NEILL. No, I didn't.

Senator KERRY. You never said anything about it to your wife?

Mr. O'NEILL. No, I didn't.

Senator KERRY. Never remarked on having made any of these observations?

Mr. O'NEILL. Not at all.

Senator KERRY. It wasn't until after things had been written in the newspapers and you'd read about them that, in effect, you were finally deposed and made a record of what you had observed that evening; is that correct?

Mr. O'NEILL. Not that I recall, sir.

Senator KERRY. You didn't——

Mr. O'NEILL. I understood there was a Whitewater panel supposedly coming in the summer. I may have read that, but I had never read anything about anyone taking any files out of any office.

Senator KERRY. The first time that you actually made a written record of this was in April 1994 when you were first deposed?

Mr. O'NEILL. That's true.

Senator KERRY. Now, your testimony here today—can we have that West Wing? I just want to try to clarify something, if we can, and come back to the—Mr. O'Neill, I just want to be clear in my own mind of the flow of people and where you were standing here. At the time that you say Ms. Williams came out of the office alleg-

edly carrying something, you were standing where—where would you put the yellow dot?

Mr. O'NEILL. A little more to the right, a little more——

Senator KERRY. You were standing where?

Mr. O'NEILL. A little more to the right, Senator. Right there, sir.

Senator KERRY. That's where you were standing when she came out?

Mr. O'NEILL. Yes, it is.

Senator KERRY. According to your earlier testimony you were in the doorway, weren't you? Didn't you say you were standing in the doorway, in the doorway of the Counsel's Office?

Mr. O'NEILL. Earlier I testified that I was standing in the doorway when Maggie Williams exited the Counsel's suite?

Senator KERRY. Yeah, out in the hallway.

Mr. O'NEILL. Before I locked the door?

Senator KERRY. Correct.

Mr. O'NEILL. No, sir.

Senator KERRY. So your testimony is you were standing down the hallway some distance?

Mr. O'NEILL. Yes, it is.

Senator KERRY. Who did you see come out?

Mr. O'NEILL. I saw whom I believe to be Evelyn Lieberman and Mr. Nussbaum and then Maggie Williams.

Senator KERRY. Maggie Williams came toward you, then; is that correct?

Mr. O'NEILL. That's correct.

Senator KERRY. Passing whose office as she came by you, anybody's?

Mr. O'NEILL. She passed the office that is right next to the Chief Counsel's Office, the First Lady's Office.

Senator KERRY. So she passed that office?

Mr. O'NEILL. Yes, sir.

Senator KERRY. Did she go in there?

Mr. O'NEILL. No, she didn't.

Senator KERRY. You say she was carrying something. Now, just with respect to your memory on that, going back to your earlier testimony—and, again, I'm just trying to be clear on all this—you were asked the question in deposition, how carefully did you look at what Ms. Williams was carrying, and you said not very carefully. What do you mean by careful? Do you remember that?

Mr. O'NEILL. No, I didn't look at it that carefully. I didn't inspect it. I just saw her walk out with her hands in front of her underneath some folders. As she walked toward me, the other woman pointed out who she was to me. She said her name. I looked at her; she looked at me; she smiled, and she continued on past me.

Senator KERRY. But now you've just used the word folders again. In point of fact, you're not certain that it was folders, are you?

Mr. O'NEILL. Yes, I am.

Senator KERRY. Do you recall testifying in deposition when you were asked, you glanced at what she was carrying? You said, "Exactly. In fact, she may even have been carrying a box. I can't remember."

Mr. O'NEILL. That's true. I said there may have been a box on top.

Senator KERRY. Did you say I can't remember?

Mr. O'NEILL. It was 4½ hours after I had been sitting there testifying, sir. I was a little bit weary.

Senator KERRY. If you couldn't remember then, how can you remember today, 2 years later?

Mr. O'NEILL. I know I can remember. I said that I saw her carrying these things in her arms.

Senator KERRY. Didn't you say I can't remember?

Mr. O'NEILL. Can't remember whether or not she had a box on top.

Senator KERRY. Isn't that pretty important, whether it was a box or folders?

Mr. O'NEILL. Sure it is.

Senator KERRY. Do you remember saying "I remember that she was carrying something in front of her"?

Mr. O'NEILL. That's correct.

Senator KERRY. But "something" is not a folder, is it?

Mr. O'NEILL. I earlier—my earlier testimony is that it——

Senator KERRY. Answer my question, Officer O'Neill. Is something a folder?

Mr. O'NEILL. To me, something was a folder at that time, yes.

Senator KERRY. It was also a box, maybe, wasn't it?

Mr. O'NEILL. On top of what I described as folders.

Senator KERRY. You said, "I can't remember if there was a box on top of them. I can't remember that." Do you remember saying that three times in one paragraph? "I can't remember that. I can't remember if there was a box. I can't remember that." Is that your testimony?

Mr. O'NEILL. I can recall what I can recall, sir, and I can—I'm telling you at this time what I can recall at this time.

Senator KERRY. I want to try to figure out what you can recall and what you recalled back then. I mean, your testimony—is that accurate, that you said you can't remember?

Mr. O'NEILL. I can't remember if I saw a box on top of what I thought she was carrying in front of her, which I would describe as folders. That is what I testified to all along.

Senator KERRY. I want to be fair here. You said, "I said files originally; I said 3 to 5 inches and it seemed—I mean, I know it was a bundle. I told you that. It was something like that, of weight. That's basically how I would like to continue to state it. I don't want to try to dream up a box."

Mr. O'NEILL. That's true, I did say——

Senator KERRY. So, in effect, you were really struggling to remember?

Mr. O'NEILL. That's exactly right.

Senator KERRY. So there is, in fact, a state of uncertainty about what you specifically saw, because even you don't remember precisely what it was?

Mr. O'NEILL. I can go back to that night. I remember quite a few things, and I can remember what I testified to as this woman walking out the door with what I described in her arms as folders, and perhaps more. It is difficult to remember. It's difficult to describe it and remember it. I saw her clearly, but I couldn't say what color

these folders were. I just realized that there was something that she was carrying out of the office when I gave my testimony.

Senator KERRY. Do you remember in answer to a question—you were asked where did a conversation take place, and you said, "I don't remember." This is a conversation with either of the cleaning women on the second floor. You said you didn't remember it. But then you said, "I think I spoke with them," and you were asked:

Question: Do you think you spoke with the cleaning woman at the time?
Answer: One of them at least.
Question: Which one?
Answer: Probably Diane.

Then you went on, but you didn't recall a conversation. Do you remember that series of questions?

Mr. O'NEILL. I remember that series of questions.

Senator KERRY. Then you said, "I assume it was outside the White House Counsel's Office suite or in the vicinity. I may have went to look for her in another office. I can't remember."

So your memory, even as to where you saw or had a conversation with the cleaning women, is unclear; is that true?

Mr. O'NEILL. Yes, sir.

Senator KERRY. Subsequent to that, counsel asked you, "So it was definitely somewhere other than in the White House Counsel's Office," and you said, "Right."

"What do you remember about that conversation" was the question to you, and you said, "I need to be hypnotized. I can't remember." Do you remember saying that?

Mr. O'NEILL. I think so.

Senator KERRY. So are we sitting here trying to make judgments about this? As I went through your deposition, there are a lot of "I can't remembers," a lot of "I don't recalls." My question to you is, do you still feel like you need to be hypnotized to remember this correctly?

Mr. O'NEILL. If this is the last time, no, I don't think I do.

Senator KERRY. What do you mean if this is the last time?

Mr. O'NEILL. I just don't want to go through testifying about this anymore.

Senator KERRY. Do you recall that counsel, a little while ago, asked you about what happened to the cleaners during a period of time, and you said you have no recollection of what happened, that she had moved away or something; is that right? Do you remember testifying about that?

Mr. O'NEILL. Yes, sir.

Senator KERRY. Wasn't it your job to keep track of where the cleaners were? Wasn't that specifically what you were there to do?

Mr. O'NEILL. No, sir. Inside Counsel's——

Senator KERRY. They were allowed to go in, clean and rummage through papers? Wasn't the whole purpose of your being there to watch them, see what they did or didn't do?

Mr. O'NEILL. You're talking about in the Counsel's Office?

Senator KERRY. In the Counsel's Office.

Mr. O'NEILL. I had contact with them all the time.

Senator KERRY. In answer to counsel a little while ago you said you lost track of where they were.

Mr. O'NEILL. I never said lost track.

Senator KERRY. But you didn't know where they were?
Mr. O'NEILL. I never said I didn't know where they were.
Senator KERRY. I think we can go back in the record.
Mr. O'NEILL. Go ahead and go back.
The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. O'Neill, I will be brief. What I'm going to attempt to do is, in case anybody following this has not been able to understand it—and if they have understood it they might be better than we are—but very quickly, Maggie Williams—this is sworn testimony—said that the First Lady called her from the airplane, I assume Air Force One, and told her to wait where she was, that she would call her again when she landed. Then, according to Maggie Williams, when she landed, the First Lady called her again and informed Maggie Williams of Vincent Foster's death. What else was said we don't know. Now, here is Maggie Williams, and I read verbatim her statement of the conversation with the First Lady:

> I don't really remember the ins and outs of the conversation. I know I had clear feelings I was going somewhere. I don't know where I was going, but decided on going to the White House would make sense to me. I went to the office because I thought something might happen here at the office and that—and that—and I didn't know what to expect, but I just thought I should go there. I think I just kind of had—not knowing where to go, you know, I just went there.

Now, let me ask you something. How wide is that hall we've been marching up and down for 2 hours?

Mr. O'NEILL. It's not very wide, sir.

Senator FAIRCLOTH. Five feet wide?

Mr. O'NEILL. Maybe 5 feet.

Senator FAIRCLOTH. You're a pretty big man. Now, a lady coming by you with a stack of papers that high [indicating] would be hard to miss, wouldn't it?

Mr. O'NEILL. Yes, it would, I think.

Senator FAIRCLOTH. Here is where we are. The First Lady called Maggie Williams twice: once from the airplane and then on the ground. I read you what Maggie Williams said about the conversation. You saw Maggie Williams coming out of the Counsel's Office with a stack of papers roughly 5 inches high, folders. She went to her office, put them in her office and locked the door.

Mr. O'NEILL. That's correct.

Senator FAIRCLOTH. Now, anybody can draw their own conclusions as to what happened. I thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Officer O'Neill, I want to clarify just a couple of things that have come up. I think Senator Kerry asked you about some testimony you had given a couple of minutes ago when I asked you whether you had watched the cleaning ladies every minute that they were in the White House Counsel's suite, and I believe your answer was that one of the ladies may have gone into Mr. Foster's office to remove the trash and you didn't see it; correct?

Mr. O'NEILL. That is correct, sir.

Mr. CHERTOFF. That's not to say you lost track of where they were; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. You knew they were in the White House Counsel's suite; correct?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Now, a lot has been made about the fact that you indicated some uncertainty about whether there was a box on top of the folders. Are you in any doubt about the fact that Maggie Williams was carrying folders as she walked out of the White House Counsel's Office and walked right next to you, past you and walked into her own office?

Mr. O'NEILL. I'm not in any doubt about it, sir.

Mr. CHERTOFF. Where you are hesitant is only with respect to whether there was a box of some kind, a file folder box, that she was carrying as well; right?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Where you're not sure, you tell us you're not sure; right?

Mr. O'NEILL. I would—yes, sir, I would.

Mr. CHERTOFF. You're not playing games with us. You're not going to tell us you're certain about something if you're not; right?

Mr. O'NEILL. No, sir.

Mr. CHERTOFF. Also, it's been developed at some length that there are a number of details about that evening, ranging from exactly what you did when you first arrived at 6 p.m. to where you spoke to the cleaning ladies later that night, to which you answered, "I can't remember."

Again, if you are capable of remembering something, you tell us?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. If you don't remember something, you tell us that, too?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Have you ever testified in court in cases?

Mr. O'NEILL. Yes, I have.

Mr. CHERTOFF. In talking to other members of the Secret Service, I'm sure you've discussed with them over the years their experiences testifying in court?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. I take it that you have learned over your years of either testifying or from talking to others that it's very common for people to remember things that are important about something and not remember details that are unimportant?

Mr. O'NEILL. I would agree with that.

Mr. CHERTOFF. It seems to me, correct me if I'm wrong, that what you're trying to do when you're testifying here is give us or describe to us the image you have in your mind, in your mind's eye, so to speak, of what happened on that evening up on the second floor of the West Wing of the White House; is that correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. You're certainly not aware of any theory in which the fact that—or any—let me put the question this way.

You certainly wouldn't have the opinion that when someone says I can't remember, it means that they're—somehow it discredits

their testimony? You would agree with me that when people say I can't remember, it does not necessarily discredit their testimony?

Mr. O'NEILL. I would hope not.

Mr. CHERTOFF. In fact, would it surprise you to learn that during the course of hearings both this year and last year, many, many people have said I can't remember many, many times about many, many things?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. I have nothing further.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much, Senator Sarbanes, Mr. Chairman.

Officer O'Neill, I know it is hard to be asked all these questions over and over again, but people's reputations are at stake. You're aware of that, are you not?

Mr. O'NEILL. Yes, ma'am.

Senator BOXER. So many people are hanging on your words because their reputations are at stake in the accuracy of your words and your recollections. This isn't just a hearing about an issue that doesn't impact people directly. You understand that?

Mr. O'NEILL. Yes, ma'am, I do.

Senator BOXER. Now, Officer O'Neill, you have said that you saw Maggie Williams carry papers out of Vince Foster's office on the night of the suicide, yes, and we've talked about that for many hours now?

Mr. O'NEILL. To the best of my recollection, that's what I recall.

Senator BOXER. To the best of your recollection, that's what you recall. Now, do you know that you are the only one who has testified to this, and that there may even be some polygraph tests that are talked about later about this issue? Are you aware of that?

Mr. O'NEILL. Yes, ma'am.

Senator BOXER. Now, Senator Shelby held up a folder like this, Senator Faircloth did as well, and you said this is what I'm talking about; is that right?

Mr. O'NEILL. I can just describe it as folders.

Senator BOXER. All right. You describe it as folders. Now, I'm going to talk more about that because we have to hang on your words and your recollections.

Mr. O'NEILL. Yes, ma'am.

Senator BOXER. Both the large picture, as Majority counsel has talked about, and details of that night, because you never did write about what you saw that night——

Mr. O'NEILL. That's true.

Senator BOXER. —is that correct?

Mr. O'NEILL. That's correct.

Senator BOXER. You never filed any report that someone was carrying boxes or files or folders; is that correct?

Mr. O'NEILL. That is correct.

Senator BOXER. The first time you talked about it was 9 months after the event took place; is that correct?

Mr. O'NEILL. That's correct.

Senator BOXER. OK. Now, when Senator Shelby and Senator Faircloth held that up and you nodded, I decided to look back at the deposition you gave this Committee, and I would ask if counsel is interested in looking at pages 80 to 81 of the deposition to this Committee, in which you testify, in essence, that Maggie Williams was carrying files and then, in expanding on that, you said folders on top of each other. Do you recall saying that?

Mr. O'NEILL. In the deposition that I gave to—today or before?

Senator BOXER. To this Committee, pages 80 to 81. I can give you the date if my counsel will—June 23, 1995, pages 80 to 81. It's been made available to you.

Mr. O'NEILL. To the best of my recollection, that's what I recall.

Senator BOXER. OK. Then, on pages 175 to 176 in your deposition of June 23, 1995, you said the following, that Maggie Williams may have been carrying a box, possibly on top of folders. Do you recall saying that?

Mr. O'NEILL. Yes, I do.

Senator BOXER. Do you recall saying it may have been a small hatbox?

Mr. O'NEILL. I described it as being the shape of a small hatbox, yes, lightweight.

Senator BOXER. I'm sorry?

Mr. O'NEILL. Lightweight-type hatbox.

Senator BOXER. Lightweight hatbox. Is a hatbox round?

The CHAIRMAN. I don't believe—would you restate that again? I don't think you said lightweight hatbox, but like a hatbox, lightweight. Is that——

Mr. O'NEILL. That's correct.

The CHAIRMAN. I don't mean to put words in your mouth, but——

Senator BOXER. I'm sorry? Say it——

The CHAIRMAN. Why don't you ask the question.

Senator BOXER. Mr. Chairman——

Senator SARBANES. I understood, Officer——

Senator BOXER. —I'm trying to continue, if I might.

Senator SARBANES. Officer O'Neill, I understood you to say a lightweight hatbox; is that correct? That's what I understood just now when you responded. We just want to be clear on that.

The CHAIRMAN. I did not understand that and that's why I thought we needed a point of clarification. Would you describe the box?

Senator BOXER. Mr. Chairman, if you don't mind, if I might continue, and I'd be happy to yield—if a Senator would ask me to yield without losing my time, I'd be happy to yield.

The CHAIRMAN. Certainly, you will not lose your time. Mine was only for the point of clarification because I think there was a question about the description of the box.

So, for the purposes of clarification, would you describe the box?

Senator KERRY. Can we have the stenographer read it back?

Senator BOXER. I was going to suggest that, Mr. Chairman. If we could have the stenographer read back Mr. O'Neill's comments, let's find out what he said instead of trying to remember ourselves.

Senator KERRY. Can we have the stenographer read it back, Mr. Chairman, please?

The CHAIRMAN. I have no problem with having the stenographer read it back, but I'm going to ask again, then, if Mr. O'Neill would give a description of the box. I think that would be the more appropriate——

Senator KERRY. Could we first have her read it back and then he can describe what she says he said.

The CHAIRMAN. OK. Then would you describe the box?

Mr. O'NEILL. You want me to describe it now, sir?

The CHAIRMAN. The reporter is——

Senator KERRY. The reporter's going to read it back.

The CHAIRMAN. —going to attempt to give us what she has down on the record, and then I'd ask, for purposes of clarification—I'd also ask that the clock stop so that—and put back whatever time that we've taken so that when we do start, the Senator hasn't lost any time.

Senator BOXER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Start with a series of questions from Senator Boxer.

Senator SARBANES. Mr. Chairman, could we move the microphone over—I think right from the——

The CHAIRMAN. If you could take that microphone——

Senator KERRY. Just hand it to her. There's one behind her.

The CHAIRMAN. We're going to do it. Take it easy now. Just calm down.

[The reporter read the record as requested.]

I think—and if you read the deposition—and then I'm going to ask for clarification—his deposition says "like a hatbox," and he goes on, comma, "a small hatbox." He said "like a hatbox" in his deposition, "a small hatbox." So he said "it is like a hatbox, a small hatbox." That is it.

Mr. O'Neill, if you would like to clarify that any more, you may, otherwise let's go back to Senator Boxer.

Senator SARBANES. I think he is adding here today, Mr. Chairman, a lightweight hatbox after a small hatbox.

Senator KERRY. After a small, lightweight hatbox.

The CHAIRMAN. But his description is "it is like a hatbox," comma, "a small"—I think we can begin to split hairs ad infinitum, but why don't we continue——

Senator KERRY. We're splitting ounces and pounds.

The CHAIRMAN. That's right. Let's put the time back on.

Senator Boxer.

Senator BOXER. Thank you for your clarification, Mr. Chairman.

So, on pages 80 to 81, you said Williams was carrying files and then you said folders on top of each other, you said yes. Then, on pages 175 to 176, Williams may have been carrying a box, possibly on top of the folders, and you said yeah, you remembered saying that. Then you said a small hatbox—and I won't get into lightweight, heavyweight—but the bottom line is like a hatbox. Was it round? A hatbox is round. Or was it a square hatbox?

Mr. O'NEILL. Rectangular. I described—I would describe it as rectangular.

Senator BOXER. A rectangular, lightweight hatbox.

Mr. O'NEILL. Let's just strike the hatbox.

Senator BOXER. Let's strike——

The CHAIRMAN. Let's——

Senator KERRY. Are you a Member of the Senate, by any chance?

Senator BOXER. Mr. Chairman, the reason that I'm taking this time, if it isn't obvious to anyone, is because of a very serious matter that concerns this Committee: The recollection of the only witness that says he saw Maggie Williams carrying papers out of an office. We're going to spend time on this. We're going to talk about polygraph tests. We're going to talk about what Mr. O'Neill saw. I have to say it's extremely confusing to me and, if I'm someone who is hanging on his every word, I'm worried.

Now, I'm not done with what you said on pages 175 and 176. After you said a small hatbox, now you say just strike it, so I assume when you gave the deposition, you didn't mean to say that or you said it without thinking about it. I'll accept that. You're correcting your deposition. Then you say "I don't know." You say "I don't know." Then you say "I don't want to dream up a box. It's getting confusing. I can't remember."

Do you remember saying that on pages 175 and 176 of your deposition?

Mr. O'NEILL. Yes, I do.

Senator BOXER. OK. So it's getting confusing and you can't remember, and you remember saying that. I think it's very important for this Committee to understand that you stand by that. We went from files to folders on top of each other; to she may have been carrying a box, possibly on top of folders; small hatbox; now strike that; I don't want to dream up a box; it's getting confusing and I can't remember. The witness has stipulated he remembers saying all those things.

Now, tell me, Officer O'Neill, as you saw Ms. Williams walking down past you, did she try to hide either the folders or the hatbox or the papers? Did she try to hide it from you?

Mr. O'NEILL. No, she didn't.

Senator BOXER. Now, I want to proceeed to your introduction to Maggie Williams and, again, I'm going to look at your deposition. In your deposition, you said that Ms. Lieberman—and I'm looking at page 172—said, and I'm quoting, after you're asked—I'm going to just read a little part of this:

Question: You testified earlier that when Maggie Williams came out of the White House Counsel's Office suite Ms. Lieberman introduced Ms. Williams to you?

Answer: Yes.

Question: Can you tell us exactly how that happened, what exactly happened?

Answer: She walked out with her arms down in front of her with the files and everything like that. The lady that was standing by the door opened her mouth and said that's Maggie Williams, the First Lady's Secretary.

Do you remember saying that she said that in your deposition, "that's Maggie Williams, the First Lady's Secretary"? She just gave that information?

Mr. O'NEILL. Yes, ma'am. She did.

Senator BOXER. OK. I want to ask you, commonsense-wise, would somebody say to you, walking down the hall, "that's Maggie Williams, the First Lady's Secretary," or would it be, you would say good evening and how are you this evening and she would say I want you to meet Maggie—what sounds like the more normal course of conversation? Let's not——

Mr. O'NEILL. I can repeat what I remember.

Senator BOXER. All right. That's what I want to get to and then I'll stop, Mr. Chairman, with your graciousness. I'm almost through here.

The CHAIRMAN. All right.

Mr. O'NEILL. I remember the woman I know to be Ms. Lieberman standing right outside the Chief Counsel's suite. The——

Senator BOXER. Have you since learned that Ms. Lieberman was working for Maggie Williams?

Mr. O'NEILL. I'm sorry, I was trying to complete the question that you asked me.

Senator BOXER. Go ahead.

The CHAIRMAN. Go ahead, continue.

Senator BOXER. I'm sorry, I'm just running out of time and I was rushing. I'm sorry.

The CHAIRMAN. I'm going to let you continue, so don't——

Senator BOXER. Thank you.

The CHAIRMAN. Go ahead. Mr. O'Neill, you were——

Mr. O'NEILL. Do you want me to continue with that—answering the question?

The CHAIRMAN. If your response is——

Mr. O'NEILL. She——

The CHAIRMAN. Go ahead.

Mr. O'NEILL. I have no comment now. Thank you.

Senator BOXER. OK. The question is, did you know at that time that Ms. Lieberman worked for Maggie Williams?

Mr. O'NEILL. No, I did not.

Senator BOXER. Do you think that the Chief of Staff to the First Lady is a secretary?

Mr. O'NEILL. No, I do not.

Senator BOXER. Let me rephrase that.

Mr. O'NEILL. No, I do not.

Senator BOXER. Do you think that a woman who works for the Chief of Staff for the First Lady would refer to her boss as the First Lady's Secretary?

Mr. O'NEILL. At the time I was confused.

Senator BOXER. You were confused?

Mr. O'NEILL. Yes, ma'am.

Senator BOXER. At the time you were confused or are you confused now?

Mr. O'NEILL. At the time I testified that—on lines 12 and 13 she said all that, "that's Maggie Williams, the First Lady's Secretary."

Senator BOXER. You were confused when you said that?

Mr. O'NEILL. I was confused that I may not have recollected exactly what was told to me or mentioned when Maggie Williams came out of the office by the woman standing there.

Senator BOXER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Let me ask you this. Did Ms. Lieberman introduce Maggie Williams to you and identify her as Maggie Williams?

Mr. O'NEILL. Yes.

The CHAIRMAN. Do you recall that?

Mr. O'NEILL. Yes, I do.

The CHAIRMAN. Is your confusion with respect to the title that she may have given her—Chief of Staff or First Assistant or Assistant or Secretary? Is that the confusion?

Mr. O'NEILL. Yes, sir.

The CHAIRMAN. So the confusion lies, at that point in time, with respect to your recollection when you gave this deposition, as it relates to the title of Ms. Williams. Is that what you're testifying to?

Mr. O'NEILL. Yes, it is.

The CHAIRMAN. OK. I'm just attempting to get a little clarification as to what that confusion might be.

Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Officer O'Neill, there are days like this when I wish I hadn't gone to law school, and I am sure that you probably, as has been indicated earlier, wish you had not been on duty that night.

There have been statements made about what's obvious to everyone, and I think it is quite obvious to all of us here that confusion is the enemy of truth, and if we can sow enough confusion, perhaps we can take the attention off of what you actually recall.

Now, I dare say that none of us here on this panel could give testimony about conversations held several years ago and repeat verbatim everything that was said and make sure that we had it the same way every time, but you are a professional in the Secret Service, Uniformed Secret Service; is that correct?

Mr. O'NEILL. That's correct.

Senator BOND. In your job, you realize that on occasions, you have a responsibility to the Service and to the Government to testify to the very best of your ability as to what you remember?

Mr. O'NEILL. Yes, it is.

Senator BOND. Do you have any motive or any reason to fabricate any testimony or to make up something that did not actually happen?

Mr. O'NEILL. No, sir, I don't.

Senator BOND. Officer O'Neill, I would say that in this instance, when we talk about conflicting testimony, there are possibly other motives that others have, but that's not your problem to worry about. I want to go back over a few questions. The rule in the Senate is not has every question been asked, but has everybody asked the question.

You have testified that as you were standing in the hallway, a woman known to you or identified to you as Maggie Williams came out of the Counsel's Office with something in her hands; is that correct?

Mr. O'NEILL. Yes, it is.

Senator BOND. Could you show us the size of what she was carrying? Can you show us how she was carrying this, just with your hands, how she was holding it?

Mr. O'NEILL. She was holding it out in front of her [indicating].

Senator BOND. To the best of your recollection now, what was "it"?

Mr. O'NEILL. To the best of my recollection, I saw her carrying folders in her hands at the bottom of her arms, extended in front of her.

Senator BOND. About how thick was the stack of folders or whatever she was carrying?

Mr. O'NEILL. To the best of my recollection, it was with some weight, 3 to 5 inches.

Senator BOND. She went down the hall to her office; is that correct?

Mr. O'NEILL. That's correct.

Senator BOND. You indicated they must have been heavy, because what did she do when she got to the end of the hall?

Mr. O'NEILL. She had to brace them on a file or a cabinet that was next to the door.

Senator BOND. Could you show us just what kind of action you recall she took with those items in her hands?

Mr. O'NEILL. I can't recall that, sir.

Senator BOND. But she did brace them?

Mr. O'NEILL. Yes, sir.

Senator BOND. Did she unlock the door?

Mr. O'NEILL. As far as I recall, she opened the door. I cannot—I'm not exactly sure if it was locked at this time.

Senator BOND. She opened the door and went in with what she was carrying in her hands?

Mr. O'NEILL. That's what I recall.

Senator BOND. She was in there a very short time?

Mr. O'NEILL. That's correct.

Senator BOND. Then she reemerged?

Mr. O'NEILL. Yes, yes, sir.

Senator BOND. Now, I don't recall having heard this question today, but just to be clear, did she have those items in her hand when she came out?

Mr. O'NEILL. No, sir.

Senator BOND. It is, therefore, safe to assume that whatever she was carrying was left somewhere behind that door which she entered and from which she reemerged?

Mr. O'NEILL. She didn't come out with anything in her hands, sir.

Senator BOND. I think we will draw the conclusion that she left whatever she had in her hands in that office. She then locked the door?

Mr. O'NEILL. She did, as far as I can recall.

Senator BOND. There has been a lengthy series of questions related to specific statements and specific titles used during that evening. You have indicated that some of the discussions, some of the oral discussions at times may have been confusing in terms of the titles, such as Secretary to the First Lady; that's correct?

Mr. O'NEILL. Yes, that's correct.

Senator BOND. Is there any confusion or any hesitancy that you have about the actions you witnessed that we just discussed?

Mr. O'NEILL. No, sir.

Senator BOND. You have told us and, as I read your deposition, you told the attorneys during the deposition the same thing.

Now, the question has been asked about whether you made any record of this contemporaneously, at the same time you observed it. Your job does not demand of you that you make written records of what you see on your rounds, does it?

Mr. O'NEILL. In some cases, yes, sir.

Senator BOND. What would you normally record? What things would you make a written record of?

Mr. O'NEILL. If we were involved in an arrest at the White House.

Senator BOND. An arrest. You would make a written record of an arrest?

Mr. O'NEILL. That's correct.

Senator BOND. Do you normally make written records of White House staff as you observe them in the hallways?

Mr. O'NEILL. No, sir.

Senator BOND. Do you from time to time see White House staff members carrying items in the hallway?

Mr. O'NEILL. Of course, yes.

Senator BOND. You do not make a written record of those observations on a routine basis, do you?

Mr. O'NEILL. That's correct.

Senator BOND. Did anyone suggest to you at the time that you should make a written record of what you saw on the night of Vince Foster's unfortunate suicide?

Mr. O'NEILL. No, no one did.

Senator BOND. So there was no practice which was violated by your failing to make a record on that evening, was there?

Mr. O'NEILL. No, sir.

Senator BOND. But there did come a time later on when you were asked what happened and what you saw; is that correct?

Mr. O'NEILL. That's correct.

Senator BOND. You have testified, under oath, here and many other places to the actions that we have just discussed, and there is no question in your mind that that is what happened?

Mr. O'NEILL. That's correct, sir.

Senator BOND. Thank you, Officer O'Neill, and I wish you well.

Mr. O'NEILL. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman.

Officer O'Neill, I know this is difficult and you're probably nervous. This is a tough grilling for you, but you can imagine what it's like for us. We have to talk to everybody.

I want to talk to you about that night because, obviously, you and all the other witnesses in this hearing are being called upon to remember something that happened in a fairly short space of time——

Mr. O'NEILL. That's true.

Senator MOSELEY-BRAUN. —at a time right after the news of Mr. Foster's suicide. I gather from the testimony that all of this transpired between about 10:40 and 11:40 at night, that night?

Mr. O'NEILL. That's correct.

Senator MOSELEY-BRAUN. You testified, also, that you knew Ms. Lieberman or you had met her before?

Mr. O'NEILL. Would you repeat the question?

Senator MOSELEY-BRAUN. Ms. Lieberman, you knew her from before?

Mr. O'NEILL. No, I did not.

Senator MOSELEY-BRAUN. But you testified that you had talked to her before you met Ms. Williams officially; is that correct?

Mr. O'NEILL. Just earlier in that hour.

Mr. O'NEILL. OK. Earlier, in one of the depositions at least, you mentioned that you had a recollection that Ms. Lieberman was wearing a dress, a summer dress.

Mr. O'NEILL. When I was asked about clothing, I think I recalled a lightweight, light-colored dress or—like a pantsuit, to me. This isn't specific information. I mean—here we go. Yes, ma'am, I testified to that.

Senator MOSELEY-BRAUN. OK. On another occasion you testified that she had on shorts?

Mr. O'NEILL. No, I did not.

Senator MOSELEY-BRAUN. According to the——

Mr. O'NEILL. I think I said that about Ms. Williams.

Senator MOSELEY-BRAUN. According to the information that we have—all right. Now, in terms of your meeting Ms. Williams, do you remember what she was wearing?

Mr. O'NEILL. I can really just sit here and say I don't recall what she was wearing, no.

Senator MOSELEY-BRAUN. Was she the only black woman there at the time?

Mr. O'NEILL. As far as I recall, yes.

Senator MOSELEY-BRAUN. When you met her, which was within an hour or so of her learning of Vince Foster's death, did she look upset to you?

Mr. O'NEILL. Did who look upset to me?

Senator MOSELEY-BRAUN. Ms. Williams. Did she look upset to you?

Mr. O'NEILL. At the point that I saw her, I didn't—nothing registered to me that she was upset at that point.

Senator MOSELEY-BRAUN. Did she look like she had been crying or her makeup was smeared or did her face look like she was distraught?

Mr. O'NEILL. Not that I recall.

Senator MOSELEY-BRAUN. You mentioned in your testimony a few minutes ago that when she was introduced to you, she smiled at you.

Mr. O'NEILL. That's correct.

Senator MOSELEY-BRAUN. Did you think it was unusual that she would smile at you in light of everybody moving around and following the news of this death?

Mr. O'NEILL. She didn't give me a great big smile. She just gave me a glancing smile.

Senator MOSELEY-BRAUN. Did you speak to her at that point?

Mr. O'NEILL. I think I said hello.

Senator MOSELEY-BRAUN. Did you say anything else to her?

Mr. O'NEILL. No.

Senator MOSELEY-BRAUN. Did she say anything else to you?

Mr. O'NEILL. No, she didn't.

Senator MOSELEY-BRAUN. So this exchange between—it was just a matter of your saying hello and she didn't say anything back, and then she walked on down the hall?

Mr. O'NEILL. Yes, ma'am.

Senator MOSELEY-BRAUN. Where did Ms. Lieberman go?

Mr. O'NEILL. She was standing in the same place.

Senator MOSELEY-BRAUN. You testified at the time that you just glanced at her as she moved past you and that you didn't notice that there was anything at all unusual in her demeanor toward you?

Mr. O'NEILL. Ms. Williams?

Senator MOSELEY-BRAUN. Ms. Williams.

Mr. O'NEILL. That's correct.

Senator MOSELEY-BRAUN. And that you did not think there was anything suspicious about the way she acted?

Mr. O'NEILL. Not at all.

Senator MOSELEY-BRAUN. Do you remember the first time you realized that there might have been something important in your exchange at that moment, in that fleeting moment?

Mr. O'NEILL. No, I'm sorry, I cannot remember that.

Senator MOSELEY-BRAUN. In your testimony, you said that it was only later that you realized, after some considerable amount of time passed, that you had read an account about documents?

Mr. O'NEILL. That's correct. I can remember testifying to that.

Senator MOSELEY-BRAUN. So what all of this has been about, really, is your reconstructing in your mind what it was that you saw; is that correct?

Mr. O'NEILL. That's correct.

Senator MOSELEY-BRAUN. All right. Mr. Chairman, I'm going to defer the rest of my time. I know we've got—I'd like to give the rest of my time to the counsel.

The CHAIRMAN. Richard.

Mr. BEN-VENISTE. Thank you, Mr. Chairman. Thank you, Senator Moseley-Braun.

Is there something called an incident report?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. You did not fill out an incident report for that evening?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. You were asked as to whether anyone suggested that you fill out a report; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. But no one could have suggested that you fill out a report for the simple reason that you didn't tell anyone what you claimed to have seen on that night; isn't that so?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Now, you testified that you never recall having read anything about anyone removing files from the White House Counsel's Office in the newspaper, do you recall that, just a little while ago here today?

Mr. O'NEILL. Yes, I do.

Mr. BEN-VENISTE. But you know that's not true?

Mr. O'NEILL. I did read something about it, yes.

Mr. BEN-VENISTE. Indeed, the fact is you read a newspaper article in July 1994; isn't that so?

Mr. O'NEILL. I—July 1994?

Mr. BEN-VENISTE. Yes, sir.

Mr. O'NEILL. Are we talking about a year and 5 months after or a year and 4 months after—July 1994, you're talking about a year later?

Mr. BEN-VENISTE. Yes, sir.

Mr. O'NEILL. I may have.

Mr. BEN-VENISTE. Don't you recall testifying that you read in the newspaper about whether anything had been removed from Mr. Foster's office?

Mr. O'NEILL. I may have read that.

Mr. BEN-VENISTE. You said that you read a story in The Washington Times and possibly The Washington Post.

Mr. O'NEILL. If it's in the testimony, yes, sir.

Mr. BEN-VENISTE. Do you recall it, that you did, in fact——

Mr. O'NEILL. I've read a lot of newspapers in the last 2 years.

Mr. BEN-VENISTE. Do you recall that you had, in fact, read a story in The Washington Times that purported to report on documents being removed from Mr. Foster's office?

Mr. O'NEILL. Purporting that documents had been removed from Mr. Foster's office?

Mr. BEN-VENISTE. Right.

Mr. O'NEILL. I read a newspaper 1 year later and I stated that in testimony?

Mr. BEN-VENISTE. Yes.

Mr. O'NEILL. I would agree to that.

Mr. BEN-VENISTE. OK. That's at page 106. "I read about documents being taken from the Counsel's Office. In fact, I think by Maggie Williams, in fact."

Is that, in fact, your testimony at page 106?

Mr. O'NEILL. Is this my testimony?

Mr. BEN-VENISTE. Do you remember giving a deposition on——

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. —June 23, 1995?

Mr. O'NEILL. Yes, I do.

Mr. BEN-VENISTE. Do you recall giving the testimony I just indicated you gave? At page 106, lines 9, 10 and 11.

Mr. O'NEILL. I gave this testimony.

Mr. BEN-VENISTE. So, in fact, you referred to a newspaper article that claimed, according to The Washington Times of July 2, 1994, and I'm quoting, "at least three White House officials went into Mr. Foster's office less than 3 hours after his body was found at Fort Marcy Park overlooking the Potomac in suburban Virginia and took documents about Whitewater Development Corporation."

Now, after you read that article, you were interviewed by the Independent Counsel; is that correct?

Mr. O'NEILL. The first time I was interviewed by the Independent Counsel was the fourth month of 1994.

Mr. BEN-VENISTE. That was the first time. After that you were reinterviewed and reinterviewed and reinterviewed; correct?

Mr. O'NEILL. I was subsequently interviewed, yes.

Mr. BEN-VENISTE. Was that at their suggestion or your suggestion on any of the subsequent occasions?

Mr. O'NEILL. Their suggestion.

Mr. BEN-VENISTE. Now, I want to just cover one more point. I see that my time has run out.

The CHAIRMAN. Go ahead.

Mr. BEN-VENISTE. With respect to the three individuals who were in the Office of White House Counsel on July 20 when you recall first seeing Mr. Nussbaum that evening, you say you saw Mr. Nussbaum and then the shapes or silhouettes of two other people who you could not identify. Now, that was at what time?

Mr. O'NEILL. That was, I would say, approximately 10 minutes—5 to 10 minutes after I opened the suite.

Mr. BEN-VENISTE. So that would have been at what time, sir?

Mr. O'NEILL. That would have been approximately—if it were 5 minutes, it would have been approximately 11:47 and if it would have been 10 minutes, it would have been at 11:52.

The CHAIRMAN. I think you mean 10.

Mr. O'NEILL. Ten.

The CHAIRMAN. So on or about 10:45?

Mr. O'NEILL. That's correct.

The CHAIRMAN. So it would be between 10:50 and 10:55.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Do you accept that?

Mr. O'NEILL. Yes, sir, I do.

Mr. BEN-VENISTE. Because the electronic records show that the office was opened at 10:42.

Mr. O'NEILL. Yes, that's true. I would have said 2242.

Mr. BEN-VENISTE. OK. So at between 2247 and 2252 is when you saw Mr. Nussbaum enter the office? You're quite sure about that?

Mr. O'NEILL. During that 10 minutes?

Mr. BEN-VENISTE. Yes.

Mr. O'NEILL. Yes, I'm quite sure.

Mr. BEN-VENISTE. Now, isn't it a fact that you have testified under oath that you saw Patsy Thomasson on the first floor of the White House at 2248?

Mr. O'NEILL. No, sir. Patsy Thomasson?

Mr. BEN-VENISTE. Now, it wouldn't have been possible for you to have been in two places at the same time, would it? You couldn't have been on the first floor and the second floor at 2248, could you?

Mr. O'NEILL. Not that I know of.

Mr. BEN-VENISTE. I call your attention to page 112 of your sworn deposition, and the question was, "And I guess my question is, does the reference in this log refresh your recollection at all about what time you may have seen her standing down there," referring to Patsy Thomasson. "My question is, does this refresh your recollection, help you place in time when you may have seen Ms. Thomasson standing at Mr. Watkins' door."

Answer: Yes, right around 2248.
Question: In laymen's terms, that would be 10:48 in the evening?
Answer: I think it would be a little later than that.
Question: Well, this would indicate what time she opened the door?
Answer: Uh-huh.

Mr. O'NEILL. Sir, I think that is referring to a log that stated what time that office was opened.

Mr. BEN-VENISTE. When you saw that log presented to you and the question was suggested to you that seeing that record may have helped you refresh your recollection about when you saw her,

you said yeah, right around 2248 is when you saw her. You know that can't be right.

Mr. O'NEILL. No, sir, I—I know that I didn't open that office up. I opened up the Chief Counsel's Office.

Mr. BEN-VENISTE. I will pursue this when I get some more time, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I think I'll pursue it now. You had started to mention the fact that you were presented with a document or a log, and there was a lawyer who was trying to refresh your memory. This is at the deposition?

Mr. O'NEILL. Would you please repeat the question, sir?

Mr. CHERTOFF. Do you have the deposition with you?

Mr. O'NEILL. Yes, we have one copy of it.

Mr. CHERTOFF. Could we get another copy to the witness? I think in fairness the witness ought to be armed with the same things we have.

Senator SARBANES. I think his counsel has been supplying it to him, as I understand.

The CHAIRMAN. Let him and his counsel have a copy. If we could bring it over there. Michael, why don't you give him an opportunity so both of them have a copy. Go ahead.

Mr. CHERTOFF. If you want to get yourself over to page——

[Recess.]

The CHAIRMAN. Counselor, do you have a copy of the deposition that you can provide to Mr. O'Neill? What page?

Mr. CHERTOFF. I think we're going to start at page 112. Just before we start, take a minute to turn to page 112 and maybe take a look at it, actually, if we could just give the witness a moment to take a look at 112 and 113, then I'll start.

You've read those?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. One of the things that's very important in terms of the proceedings—and I know Senator Boxer talked about the importance of reputations, but I also think everyone will agree it's important to be fair to the witness because you're coming here because we've requested you to come here, so I want to be fair to you and I want to make sure we have an accurate characterization of your earlier testimony. Now, I believe Mr. Ben-Veniste characterized your earlier testimony in the deposition as having been that you saw Patsy Thomasson down at Mr. Watkins' office right around 2248. I want to go back and actually put this in context.

Having read the deposition, you will agree with me that the lawyer taking the deposition first showed you a copy of a log that recorded Patsy Thomasson's entry into Mr. Watkins' office at 2248; correct?

Mr. O'NEILL. Correct.

Mr. CHERTOFF. Then the lawyer asked you whether that would help refresh your memory about the period of time in which you saw Patsy Thomasson yourself; correct?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Then, as we go to page 112, we begin at line 15 with the question:

Question: And I guess my question is, does reference to this log refresh your recollection at all about what time you may have seen her standing down there? My question is, does this refresh your recollection at all or help you place in time what time of evening you may have seen Ms. Thomasson standing in Mr. Watkins' door?

Do you have in front of you this log, this page? You say, "Yeah, right around 2248"; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. You're looking at the log that says 2248 and records Patsy Thomasson's entry; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Then the question becomes, "In lay terms, that would be 10:48 in the evening?" You answer, "I think it was a little later than that"; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. The question goes on, "Well, all this would indicate is that she opened the door at that time?" You go, "Uh-huh." Correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. When you were referring to "this," what you're saying is that the log itself, this page you're being shown, indicates 2248 as the time that Ms. Thomasson first opened the door; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Then the question is, "And your recollection is you saw her standing there sometime after that time in the evening?" You go, "Uh-huh, yes, sir." Correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. So your testimony was not that you saw Patsy Thomasson at 2248 but that you saw her after 2248?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. You didn't have the benefit of Ms. Thomasson's testimony here yesterday where she indicated she came to the White House around 10:48 or 10:49, then went up to the Counsel's Office and came back down again at approximately 11:30. You didn't know that at the time you testified in the deposition; right?

Mr. O'NEILL. No, sir.

Mr. CHERTOFF. Of course, when you saw Ms. Thomasson at the door of Mr. Watkins' office, you didn't know whether she was going there for the first time or the second time; right?

Mr. O'NEILL. Correct.

Mr. CHERTOFF. But what you did know was you saw her down there after she had been in Mr. Foster's office; correct?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. Would it surprise you to learn that her testimony yesterday, as well, confirmed the fact that she was in Mr. Foster's office and then she later went down to Mr. Watkins' office?

Mr. O'NEILL. Did you ask would it surprise me?

Mr. CHERTOFF. Yeah. She's consistent with you.

Mr. O'NEILL. Oh. That wouldn't surprise me, then.

Mr. CHERTOFF. Now, let me move forward to another area we've talked about in the deposition. Mr. Ben-Veniste read you a portion of your deposition testimony, I believe at page 106, concerning the fact that at a point in time much later than the events on July 20, you read newspaper articles that had something to do about docu-

ments being taken from the Counsel's Office. Then he made reference to a Washington Times article.

I don't want there to be a misimpression or a suggestion here that you somehow read something in the newspaper and then went in to tell the FBI or the Independent Counsel something based on the newspaper, so I want to clarify this. I want to go back to your deposition at pages 186 and 187. Actually, 185, 186 and 187. Take a moment and read, if you don't mind, just 185, 186 and 187 to yourself.

[Witness reviewed the document.]

Senator SARBANES. Could I ask counsel, is this the part of the deposition that begins about how many times he was interviewed by the FBI, five times and so forth?

Mr. CHERTOFF. Yes. Actually it begins at line 21 with the question, "Do you know how it is that you came to be interviewed by the FBI in April 1994" and——

Senator SARBANES. That was the first time he was interviewed.

Mr. CHERTOFF. Right, that's the first time. Then it ends on——

The CHAIRMAN. Let me ask you something——

Senator SARBANES. All right. I have it.

The CHAIRMAN. In April 1994, the first time you were interviewed by the FBI, had you read any recollections or any newspaper accounts of people being in the Office of the Special Counsel? Were there any that you had read at that time?

Mr. O'NEILL. No, sir, not that I recall.

The CHAIRMAN. Indeed, the article which I think has been mentioned was April, May, June, July, 3 months after you were interviewed by the FBI, there appeared something with respect to people possibly being in the Special Counsel's Office. Isn't that correct?

Mr. O'NEILL. Yes, sir, that's correct.

The CHAIRMAN. In other words, there wasn't anything in the paper that you saw or observed until after you had given at least your first of a number of interviews with the FBI; is that correct?

Mr. O'NEILL. Yes, sir, that's correct.

The CHAIRMAN. OK.

Mr. Chertoff.

Mr. CHERTOFF. As a matter of fact—and I'm going to go right to page 185 of the deposition—the question was asked of you, "Do you know how it is that you came to be interviewed by the FBI in April 1994?" You answered, "As a result of being on duty that evening and being one of the officers that had contact with Mr. Foster's office, as far as I know."

That was your testimony in the deposition; right?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. You didn't volunteer and come running to give information, did you?

Mr. O'NEILL. No, I didn't.

Mr. CHERTOFF. They asked you to come in; right?

Mr. O'NEILL. That's correct.

Mr. CHERTOFF. That's because you were on the duty roster as having been on duty and having opened and closed the door that night; right?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. Then, to read from the portion of the deposition at pages 187 to 188 about the newspaper articles, you testified in your deposition, which is part of the same deposition Mr. Ben-Veniste was using:

Question: When was it that you first read any newspaper articles relating to the issue of whether anyone had removed materials from the White House Counsel's Office suite on the night of Mr. Foster's death?
Answer: I can't recall exactly, but I think it was July.
Question: Of what year?
Answer: 1994.
Question: So it was after the time that you were first interviewed by the FBI?
Answer: Yes, it was.

So you gave the FBI your information about the events of this night at their request and before you had read anything about it in the newspaper; is that correct?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. That was your testimony in the deposition in the last month as well; correct?

Mr. O'NEILL. Yes, sir.

Mr. CHERTOFF. I have nothing more. Thank you, Mr. Chairman.

Senator SARBANES. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes and Mr. Chairman.

First of all, Mr. O'Neill, you have our sympathy. To try to recall in great detail what happened 2 years ago, it would not be easy for any of us, and that there are some inconsistencies or you can't remember every detail, we certainly understand.

Mr. O'NEILL. That's correct. Thank you.

Senator SIMON. You testified that when you were in the reception area of the Chief Counsel's Office, you saw the door open to Mr. Foster's suite all the way. As an experienced and professional police officer, if people were doing something they were trying to hide, is it likely that they would have the door open all the way or would they have the door closed or partially closed or something like that?

Mr. O'NEILL. I would imagine they would have the door partially closed.

Senator SIMON. All right. In response to a question from Senator Boxer, you mentioned when you saw Ms. Williams going down the hall, she was not trying to hide the folders that she was carrying, or whatever she was carrying.

Mr. O'NEILL. That's correct.

Senator SIMON. Now, in response to a question from Senator Shelby, you say you saw Ms. Williams come out of the Chief Counsel's suite. You did not see Ms. Williams carry anything out of Mr. Foster's office; is that correct?

Mr. O'NEILL. That is correct.

Senator SIMON. So that it is possible that Ms. Williams, who has sworn that she took nothing out of Mr. Foster's suite and has passed a lie detector test on that, it is possible that she left Mr. Foster's suite and picked up something either in Mr. Nussbaum's suite or in the reception area that was marked for the First Lady, maybe for the next trip the First Lady was going to be taking,

some background information or something like that. Is that possible?

Mr. O'NEILL. Yes, sir.

Senator SIMON. I have no further questions here. I would like to yield my time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Simon.

Officer O'Neill, when you were questioned at deposition in connection with preparation for this hearing on June 23rd, I believe you answered about your regular habits of reading newspapers. I take it on your job you have some dead time and you have occasion to read newspapers fairly frequently. Is that so?

Mr. O'NEILL. That's true.

Mr. BEN-VENISTE. You indicated that you regularly read The Washington Times, The Washington Post and USA Today; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Now, the question was put as to whether there was anything you read in the newspaper prior to the first time you gave a statement to the FBI, which we have established, although we haven't seen it, as being April 1994; is that correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Now, on December 20, 1993, there was an article in The Washington Times, of which I have a printout, which leads with this paragraph:

> White House officials removed records of business deals between President Clinton, his wife and an Arkansas partnership known as Whitewater Development Corporation from the office of Vincent Foster during two searches after the Deputy Presidential Counsel's suicide, The Washington Times has learned.

Now, that's 3 months prior to the time that you gave your first statement; wouldn't that be the case?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. On the occasion that you first saw Maggie Williams on July 20, it is your distinct recollection that she did not appear to have been crying. Is that your testimony?

Mr. O'NEILL. That's my testimony, yes.

Mr. BEN-VENISTE. Now, is it possible, Officer O'Neill, that you may be telescoping events, that you may have recollected certain things which occurred on the night of the 20th when Mr. Foster died and recollected other events on other occasions that you were present at in the White House so that your recollection of the 20th might conceivably be colored by things that you saw occurring later on?

Mr. O'NEILL. With regard to anything specific?

Mr. BEN-VENISTE. With regard to the question of Ms. Williams carrying material in her arms.

Mr. O'NEILL. I would have to disagree with that, sir.

Mr. BEN-VENISTE. You don't believe that you are telescoping other events into one night?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. Did the Independent Counsel or the FBI ever suggest to you that you may have mixed up the dates?

Mr. O'NEILL. Not that I recall.

Mr. BEN-VENISTE. Did they ever suggest that you had telescoped?

Mr. O'NEILL. No, they haven't.

Mr. BEN-VENISTE. Now, you have testified here today that you have given your rendition of these events prior to your deposition on five occasions; correct?

Mr. O'NEILL. Yes, sir.

Mr. BEN-VENISTE. But at your deposition, you recollected that you had been through it 10 times.

Mr. O'NEILL. Seemed that way, I guess, because it was 4½ hours later after I had began talking, so I guess I compounded it.

Mr. BEN-VENISTE. When you testified about the burn bags that evening, on the issue of the burn bags, do you recall what time it was that you became involved in anything to do with collecting burn bag materials?

Mr. O'NEILL. That particular evening?

Mr. BEN-VENISTE. Yes.

Mr. O'NEILL. Not exactly, sir. No, I can't recall.

Mr. BEN-VENISTE. Were you aware of being involved in any way in reviewing materials which had already been collected from offices?

Mr. O'NEILL. No. Oh—giving it to Sylvia Mathews, you mean?

Mr. BEN-VENISTE. Yes. Let me help you on this. Isn't it a fact that, at some time later in the evening or early morning of the 21st, you were asked to bring the collective and commingled burn bag materials to the Chief of Staff's Office?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Does that help your recollection?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. OK. At that time did you wait outside?

Mr. O'NEILL. No, sir.

Mr. BEN-VENISTE. You were summoned back later; correct?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. To take the materials away?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. Did you remember at the time you first gave your rendition of these events mentioning that Sylvia Mathews was the person who had gone through the materials?

Mr. O'NEILL. I do remember that, yes.

Mr. BEN-VENISTE. Did you remember that because you knew Sylvia Mathews and you knew that it was she who had gone through it, or did you look at some other records that someone had showed you to help with your recollection?

Mr. O'NEILL. I think you'll have to repeat your question.

Mr. BEN-VENISTE. Were you shown any photographs? Were you shown electronic records that showed that Ms. Mathews was in the White House that evening?

Mr. O'NEILL. I remembered the woman that I gave the bag to and then I was shown photographs in my prior interviews, and I identified her.

Mr. BEN-VENISTE. You identified her from photographs?

Mr. O'NEILL. Yes.

Mr. BEN-VENISTE. OK. As far as electronic information and documents that were shown to you, you were shown documents that reflected her presence that evening, were you not?

Mr. O'NEILL. No, sir, not that I recall.

Mr. BEN-VENISTE. I have nothing further of this witness.

The CHAIRMAN. We have no further—Senator Grams.

We have no further questions.

Senator Sarbanes.

Senator SARBANES. Senator Dodd. Senator Boxer.

Senator BOXER. Mr. Chairman, I would just like to ask one question, if I might, if it's OK.

The CHAIRMAN. Certainly.

Senator BOXER. I'll tell you why. As I've gone through the depositions, there are eight examples where, Officer O'Neill, you have contradicted yourself. These range from who you saw where, what, what time and the rest. Without going into that, to spare the Committee the time, I have an important question. Did you have an opportunity to go through your depositions to make any corrections to them? Did the Committee send you your depositions? Did you have a chance to go through those and make any corrections to them?

Mr. O'NEILL. I've looked through the testimony, yes, since I've given it.

Senator BOXER. Outside of the part about the hatbox, you stick with your depositions?

Mr. O'NEILL. I stick with my testimony and depositions, yes.

Senator BOXER. Then, Mr. Chairman, what I would like to do—with the Committee's permission so as not to waste the time of the Committee—is to write a list of these contradictions, and they're clearly contradictions, and cite the pages and put them into the record at this time so I don't have to go through them one by one, if that's agreeable to the Committee.

The CHAIRMAN. Certainly. The depositions are in the record, but if the Senator would like to make observations about possible inconsistencies, that's certainly appropriate.

Senator BOXER. Yes.

The CHAIRMAN. We will take those.

Senator BOXER. Thank you very much, Mr. Chairman. I'll do that.

The CHAIRMAN. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, I apologize. I said I had no questions.

This may have been asked, Mr. O'Neill, and I'll try to get this done quickly. You've been very patient here this morning, and we appreciate it.

As I understand it, in addition to seeing Maggie Williams, you saw Ms. Lieberman; you talked to her that evening?

Mr. O'NEILL. That's correct.

Senator DODD. You saw Mr. Nussbaum?

Mr. O'NEILL. Yes, sir.

Senator DODD. You saw Ms. Patsy Thomasson as well?

Mr. O'NEILL. Yes, sir.

Senator DODD. Is it your testimony that in the case of those three individuals, that they had nothing in their hands; they were carrying nothing?

Mr. O'NEILL. At what time, sir?

Senator DODD. At roughly the time period we're talking about here in which you observed these people leaving the Counsel's Office.

Mr. O'NEILL. I have testified that I observed Maggie Williams carrying folders, sir.

Senator DODD. I understand that. I listened to that. I was curious about Mr. Nussbaum, Ms. Thomasson and Ms. Lieberman. Were they carrying things?

Mr. O'NEILL. No, sir, I don't recall Mr. Nussbaum having anything in his hands, and I don't recall seeing Ms. Lieberman with anything in her hands, either.

Senator DODD. Are you absolutely certain of that?

Mr. O'NEILL. Yes, sir.

Senator DODD. That they had nothing in their hands?

Mr. O'NEILL. Yes, sir, I am.

Senator DODD. The first time you offered any testimony on this was in April 1994?

Mr. O'NEILL. That's correct, sir.

Senator DODD. You had not really discussed this that evening with anyone prior to that time?

Mr. O'NEILL. No, I have not.

Senator DODD. So in April 1994, which is roughly what, 9 or 10 months——

Mr. O'NEILL. It was about 9 months.

Senator DODD. —you were recalling events that occurred in that window of time on that night of July 20, 1993?

Mr. O'NEILL. Yes, sir. It was just about as hard as it is right now.

Senator DODD. I appreciate it because I find myself—I try to recall what I did yesterday and——

Mr. O'NEILL. I can't recall that.

Senator DODD. —last week. You know what I'm saying? This isn't a memory game, but it's just the normal course of events.

Where do you work in the White House now?

Mr. O'NEILL. I work anywhere I'm scheduled to work, sir.

Senator DODD. Like, where were you last week, last Thursday?

Mr. O'NEILL. Yesterday. I was at 1800 G Street working with the Legal Counsel.

Senator DODD. Where were you the last day you were at the White House on duty?

Mr. O'NEILL. I think I was assigned to the West Wing, sir.

Senator DODD. Can you remember who you saw and what they were carrying, not carrying, and so forth if we had to go back, say, a week ago today?

Mr. O'NEILL. If I had to go back a week ago today?

Senator DODD. Yes.

Mr. O'NEILL. No, sir, I couldn't.

Senator DODD. Do you understand my point? I don't think that's a failing; I think that's human nature. So, when you start to talk about remembering in April 1994, to go back 9 or 10 months earlier and recall, admittedly, a relatively brief period of time when something happens, you understand our difficulty on that point?

Mr. O'NEILL. Sure, I understand.

Senator DODD. Thank you very much. Thank you, Mr. Chairman.

Senator SARBANES. I yield to Richard to question.

Mr. BEN-VENISTE. Just one question to follow along with Senator Dodd. Not to get into all of the different versions of this, but if you have in front of you your transcript, I would ask you to take a look at the bottom of page 132 and on to page 133 which is the questioning from the Majority counsel, as were the prior questions I made reference to, where he asks:

Question: I apologize, again, if you've already answered these questions, but I just need to ask them. At the time that Mr. Nussbaum entered the office, sometime around 10:45 or a little bit later that night, did you see anyone else enter the office at the same time Mr. Nussbaum entered?

You say:

Answer: No.

Now, that obviously is different from your present recollection. Is that so?

Mr. O'NEILL. That's correct.

Mr. BEN-VENISTE. I will not go further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I'm going to have to go further, Mr. Chairman.

The CHAIRMAN. That's all right. Let's go.

Mr. CHERTOFF. I'm going to ask you to read the next question and answer so we get the full picture here.

Mr. O'NEILL. The next question?

Mr. CHERTOFF. Yeah, the next two questions and answers.

Question: All you saw was Mr. Nussbaum coming in and going back into his personal office; is that correct?

Answer: That's correct.

Question: Now, before the time Mr. Nussbaum actually got into his own personal office, were you aware that anyone else was with him? Did you hear these women's voices that you testified about earlier, or was that only after Mr. Nussbaum was in his own office?

Answer: It was after he was in his office.

Question: How long after Mr. Nussbaum got into his own office did you first hear these women's voices?

Answer: Within seconds.

That's the full testimony; correct?

Mr. O'NEILL. That's correct, sir.

Senator SARBANES. Officer O'Neill, I understood you earlier today to say that you saw Mr. Nussbaum come in and you saw figures with him, right behind him; is that correct?

Mr. O'NEILL. I did say that they went in behind him, yes.

The CHAIRMAN. Point of clarification.

Senator SARBANES. When you say——

The CHAIRMAN. If I might.

Senator SARBANES. I think we need to——

The CHAIRMAN. Just for clarification, when we talk about you observing Mr. Nussbaum and the figures following him, you believe they were women and they were entering into the suite; is that right?

Mr. O'NEILL. To the best of my recollection, Senator, I saw Mr. Nussbaum walk into his office.

The CHAIRMAN. Right.

Mr. O'NEILL. There was a little bit of a pause, a few seconds maybe, and behind him some figures went in, also.

The CHAIRMAN. Into the suite and then into his office?

Mr. O'NEILL. Yes, sir.

The CHAIRMAN. OK. Excuse me, Paul.

Senator SARBANES. Mr. Chairman, I think we're finished with our questions. Are you finished with yours?

The CHAIRMAN. We are finished. Senator Grams, do you have any?

Senator GRAMS. No.

Senator SARBANES. Mr. Chairman, before we break, then, and I don't have a question to put to Mr. O'Neill, but I do want to make this point. Counsel together, on July 11th, wrote to Mr. Starr to ask for the FBI reports and the FBI interview notes with respect to Officer O'Neill and Ms. Williams.

Now, we've heard testimony today that Officer O'Neill was interviewed by the FBI either four or five times. There's a discrepancy in some of the depositions.

The CHAIRMAN. I think four times plus ours would be the fifth.

Senator SARBANES. In his Grand Jury appearance, and actually in one of his depositions, he said he was interviewed five times by the FBI. Today I think he had some difficulty recollecting, but it's clear it's at least four, maybe five.

On the 18th, we joined together in emphasizing that request. Now, the Independent Counsel has turned that down, but I frankly think we should renew the request to the Independent Counsel for those reports. If their concern was, in a sense, confidentiality, a lot of that has been laid out here today in the course of this hearing from Officer O'Neill. It seems to me, at least just speaking for myself, it's clear that it would be helpful if we could have access to those successive interviews and the notes and reports with respect to them.

The CHAIRMAN. We'll renew that request. We'll ask counsel to join in a request of the Full Committee, once again, as it relates to both those interviews and to the other matter that we have asked with respect to Ms. Maggie Williams.

Senator SARBANES. Very good.

The CHAIRMAN. I want to thank Mr. O'Neill and his counsel for being here. I know this isn't easy, I know it's tough, and we certainly appreciate your cooperation.

Mr. O'NEILL. Thank you, sir.

Senator SARBANES. Now, Mr. Chairman, I take it we're going to break and renew right after the vote.

The CHAIRMAN. My intention——

Senator SARBANES. I would like to do that.

The CHAIRMAN. I understand. My intention is to swear in the witnesses, receive any statements they may have and then see how much time, if any, we have before the vote. I at least want to start because I know that will save us time tomorrow. So why don't we call——

Senator SARBANES. Later this afternoon, isn't it? Are we coming back afterwards? I thought we were going to resume after the vote.

The CHAIRMAN. Let's see how much we can get in here. If we want to resume, you're talking about coming back at about 3 p.m. or so. At 1:50 we have four possible votes, so that's at 2 p.m., four votes is going to bring us to at least—why don't we swear the wit-

nesses in first and then we'll look at it. We'll call our second panel. Margaret Williams and Evelyn Lieberman.

Can I ask the two witnesses to stand and take the oath.

[Witnesses sworn.]

The CHAIRMAN. Thank you.

Ms. Williams, do you have a statement that you would like to give to the Committee at this time?

Ms. WILLIAMS. Yes, Mr. Chairman, I do.

The CHAIRMAN. We would be pleased to receive it.

Senator SARBANES. Ms. Williams, you can pull that mike up to you and speak right into it. I think it would be helpful to us.

Ms. WILLIAMS. OK.

Senator SARBANES. That's much better.

SWORN TESTIMONY OF MARGARET A. WILLIAMS (MAGGIE) ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF TO THE FIRST LADY

Ms. WILLIAMS. I'm Maggie Williams. I'm Assistant to the President and Chief of Staff to the First Lady.

Mr. Chairman, Members of the Committee, Vince Foster was more than just a co-worker at the White House. Vince Foster was a friend who embodied unpretentious good judgment, keen insight and a mature perspective that many of us relied upon, particularly in difficult times. Vince Foster was greatly admired at the White House for his quiet confidence, his humble manner and his habit of not speaking out unless he had something to say.

Vince was a source of great personal support for me. I recall that he often told me to trust my own instincts and to be guided by common sense. He assured me by relying on common sense, I would look like a genius. Vince would chide me for being pessimistic, and his own sense of optimism gave me the encouragement to face the day-to-day pressures that were inherent in our work.

When I received a call from the First Lady at my apartment on the evening of July 20, 1993, telling me that Vince Foster had died, I was deeply shaken. As I considered his death over the days that followed, I realized that before he died, Vince looked tired and overworked. I also knew that he missed spending time with his family, but I did not think, not in a million years, that Vince was so distraught that he would take his own life. To this day, I cannot reconcile myself to his death.

The evening of his death I went to the White House with Mrs. Evelyn Lieberman, my assistant. I was unable to think of anything else to do. I wanted to be available. I wanted to be around as I had been the night Mrs. Clinton's father had died.

Although I do not remember everything I did at the White House that evening, I do recall asking Evelyn Lieberman, my assistant, to remain in the foyer of Mrs. Clinton's office to take or make calls; spending a short time in Mark Gearan's office, the Director of Communications, and reviewing a press statement, perhaps even making copies of it; going to my office on the second floor to look for a copy of the schedule; and then returning to Mrs. Clinton's office.

At some point that evening, I noticed a light was on in Vince Foster's office. All evening, I had been avoiding looking in the direction of Vince's office as I entered and left the First Lady's suite.

But in a strange way, when I saw the light on in his office, I had this hope, albeit irrational, that I would walk in and I would find Vince Foster there and we would have a chat sitting on his couch, as we had done so many times before.

When I walked into his office, I found Patsy Thomasson sitting behind Vince's desk looking, as I later learned, possibly for a suicide note. I began to cry. I sat on Vince's couch, and I cried the whole time. Bernie Nussbaum at one point came in and wandered around the office. He seemed at a loss for what he should do. I was in Vince's office for a very brief time. Bernie and I left at approximately the same time.

I took nothing from Vince's office. I didn't go into Foster's office with anything in mind concerning any documents that might be in his office. I did not look at, inspect or remove any documents. At no time was I instructed by anyone nor was there any suggestion from anyone that I go into Vince's office on the evening of July 20th. I disturbed nothing while I was there.

Two days later, on the afternoon of Thursday, July 22, 1993, the day before Vince Foster's funeral in Little Rock, Arkansas, I received a call from Bernie Nussbaum asking me to come to Vince's office and to take care of having the personal files of the President and Mrs. Clinton delivered to their personal lawyer, who was Bob Barnett of Williams & Connolly at the time. I met Bernie Nussbaum in Vince's office and collected the files under Bernie's supervision.

Because it was late in the day and I was getting up early the next morning to fly to Little Rock for the funeral, and mostly just because I was tired and exhausted and I wanted to go home, I decided to wait until after the funeral to transfer the documents to Mr. Barnett. After speaking with the First Lady, I arranged for the files to be temporarily kept in a locked closet in the White House residence.

I gave the files to a messenger from Williams & Connolly the following week. To my knowledge, the files that I collected and delivered to Mr. Barnett were personal files of the Clintons.

Nothing I observed in the handling of these files suggested to me that they were being handled improperly. Everything I saw on the evening Vince died mirrored in many ways my personal experience with the death of friends and family: the gathering, the grieving, the comforting and the wondering whether anything you could have done was left undone, if anything you could have said was left unsaid. How could you make Vince come alive again.

That evening was not about documents. I hope you will believe this when I say it: I finally resolved in my own mind that I'm actually happy to be here today because I am hoping that my testimony will be helpful in putting to rest any suggestion that my response or the response of anyone else in the White House to Vince Foster's death was to engage in improper conduct. Thank you very much.

The CHAIRMAN. Thank you very much, Ms. Williams.

Ms. Lieberman, do you have a statement that you would like to make?

SWORN TESTIMONY OF EVELYN SIMONOWITZ LIEBERMAN DEPUTY ASSISTANT TO THE PRESIDENT AND THE DEPUTY PRESS SECRETARY FOR OPERATIONS AT THE WHITE HOUSE

Ms. LIEBERMAN. Yes, sir. Mr. Chairman and Members of the Committee, my name is Evelyn Simonowitz Lieberman. I'm from Long Beach, New York, and I have lived in Washington since 1971. I'm Deputy Assistant to the President and the Deputy Press Secretary for Operations at the White House. I report to Mike McCurry, the White House Press Secretary.

Prior to joining the Press Office in October 1994, I was assistant to Maggie Williams, Mrs. Clinton's Chief of Staff. Before joining the Administration in January 1993, I served for 4½ years as Press Secretary to Senator Joseph R. Biden, Jr. of Delaware, then Chairman of the Senate Judiciary Committee. During the time I worked for Senator Biden, I helped set up many Committee hearings. As a staff person, I understood and understand today the seriousness of such an undertaking and how important it is to find the truth. I hope that we're looking for the truth now.

I will answer any questions you may have. Thank you.

The CHAIRMAN. Thank you very much. It is now 1:21, and we have four rollcall votes——

Senator SARBANES. Apparently three, Mr. Chairman.

The CHAIRMAN. All right, three rollcall votes——

Senator SARBANES. We can come back sooner.

The CHAIRMAN. —starting at 1:50. At the suggestion of counsel for both sides and the Ranking Member, it would seem to me appropriate to take a break, because we're going to be leaving in any event at 1:50, and to try to get back here as soon as the last vote concludes, hopefully at 2:45. This way we can get as much testimony as possible between now and when we adjourn. I don't know whether we're going to be able to complete the session with our two witnesses, but I'd like to get as much as possible done today.

I want to thank you for being here. We're going to take a recess, and we will reconvene at 2:45.

[Whereupon, at 1:22 p.m., the hearing was recessed, to be reconvened at 2:45 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. We apologize. We started a little bit late because the vote did not go off at 1:50 the way they had announced, but we are here and I'd like to see if we can't get as many of the questions asked as we possibly can, and it's my intention to push as far as we can. If it becomes obvious that we will not end by about 4:15, then I'll make a determination just how long we're going to go.

OPENING STATEMENT OF EDWARD S.G. DENNIS, JR. COUNSEL TO MARGARET A. WILLIAMS

Mr. DENNIS. Mr. Chairman, if I might address the Committee. I'm Edward Dennis. I'm counsel for Margaret Williams.

The CHAIRMAN. Ed, how are you? Why don't you take a chair here.

Mr. DENNIS. That's not necessary, Mr. Chairman. I wanted to address you briefly, and I realize it's not customary for counsel to address the Committee.

The CHAIRMAN. Why don't you sit down and do exactly that, Ed.

Mr. DENNIS. The opportunity——

The CHAIRMAN. You have the opportunity. Move that microphone in front of you.

Mr. DENNIS. Thank you very much. I thought it might be helpful before the testimony begins to submit to the Committee a number of documents that had been made a part of the record, and we've made copies so that each Member of the Committee can have a copy of an affidavit I have prepared and sworn to in connection with a polygraph examination—to be more precise, two polygraph examinations which my client, Margaret Williams, has taken, and I'd like to make that a part of the record.

It basically sets forth my certification that she's passed these polygraph examinations according to the polygraphers that conducted them. There's also a copy of a report from a Mr. William Anderson, who conducted one of the polygraphs as a private polygrapher.

Mr. Chertoff and I had agreed that this report, although it could be read into the record at Mr. Anderson's deposition, which was held on Monday, that I would not make—did not want to have the report itself made a part of the record. However, we do intend to release this publicly, and I did not want to withhold from this Committee any document that was going to be released publicly and so I'd like to make that a formal part of this record for the Committee's consideration, along with a short biography of Mr. Anderson, if you feel that that would be helpful.

The CHAIRMAN. We'll receive all of those things.

Mr. DENNIS. Thank you very much, Mr. Chairman.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Ed, have you given copies to our people? Do we have those documents, do you know?

Mr. DENNIS. I'm sorry, I do have copies with me. Should I approach the——

The CHAIRMAN. Why don't we get somebody who will come on over and make them available and distribute them to the Committee. We thank you.

Mr. DENNIS. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Ms. Williams, good afternoon. Ms. Lieberman, good afternoon. Thank you for appearing. We understand that you had to delay a trip in order to appear, and we appreciate that. We also appreciate that the events of particularly the 20th were difficult and we don't want to revive those unpleasant and difficult memories.

We want to focus as much as possible on the essential parts of what we're looking at for the Committee. We do have your statement which sets forth in a couple of paragraphs the events of the 20th.

I want to ask you briefly about your recollection of the period of time in Mr. Foster's office that you were seated on the couch. When you arrived, Ms. Thomasson was already there behind the desk; correct?

Ms. WILLIAMS. That is my recollection.

Mr. CHERTOFF. Then, after you arrived and sat down on the couch, Mr. Nussbaum came in?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Correct?

Ms. WILLIAMS. That's my recollection.

Mr. CHERTOFF. Then you recall leaving with Mr. Nussbaum, although you don't remember whether you walked out first or Mr. Nussbaum walked out first?

Ms. WILLIAMS. Yes. I don't recall which of us left the room first, but I think that we left fairly close to each other in time.

Mr. CHERTOFF. In fact, you have an image in your mind, I take it, of Mr. Nussbaum ahead of you on the staircase going down from the second floor?

Ms. WILLIAMS. Right, that's correct.

Mr. CHERTOFF. Your recollection is that Patsy Thomasson was then left alone, remaining in Mr. Foster's office?

Ms. WILLIAMS. That's correct.

Mr. CHERTOFF. I will also ask you, because it was obviously presented by the last witness, did you remove anything from Mr. Foster's office on the 20th?

Ms. WILLIAMS. No, sir, I did not.

Mr. CHERTOFF. Did anybody give you anything on the 20th to remove?

Ms. WILLIAMS. No, sir, they did not.

Mr. CHERTOFF. Now, let me move your attention to July 22, 1993, that's the Thursday. On that Thursday you were at the White House; correct?

Ms. WILLIAMS. Right.

Mr. CHERTOFF. Were you in your office at the Old Executive Office Building during the afternoon?

Ms. WILLIAMS. Yes, sir, I was.

Mr. CHERTOFF. Were you aware that at some point in the early afternoon there was some kind of a review of documents that took place in Mr. Foster's office in which Mr. Nussbaum and members of the White House Counsel's Office were present and in which certain representatives of law enforcement were present?

Ms. WILLIAMS. I don't know at what time I had that knowledge. It seems to me that there were at least 2 days when the officials

were coming to review the contents of Vince's office, Wednesday and Thursday, but I believe it's Thursday that they actually did the review so——

Mr. CHERTOFF. You were not present in the office for the review?

Ms. WILLIAMS. No, no, sir.

Mr. CHERTOFF. So you don't have any firsthand observations of what occurred during that review early in the afternoon of the 22nd?

Ms. WILLIAMS. No, I do not.

Mr. CHERTOFF. Were you present for any of the discussions among members of the White House Counsel's staff before that review took place about the manner in which it would be conducted?

Ms. WILLIAMS. As I've said in my deposition, it is my recollection that there was a lot of discussion in the White House generally about how the review might take place. It is possible that I was in a conversation, but peripherally, as I would recall it.

Mr. CHERTOFF. Do you remember anything about those conversations?

Ms. WILLIAMS. Generally, I think there was an issue of whether or not anyone could come into Mr. Foster's office and simply start looking at his documents, if there was some issue that had to do with executive privilege or some process by which the officials who were interested in looking at the documents in the White House might accommodate each other. That seemed to be the general thrust of the discussion.

Mr. CHERTOFF. Do you remember whether there were discussions about any prior arrangements with the Justice Department on how that review would be handled early in the afternoon of the 22nd?

Ms. WILLIAMS. No, sir, I do not.

Mr. CHERTOFF. Do you remember the participants in the discussions?

Ms. WILLIAMS. No. It seemed to me there was quite a bit of chatter. I don't recall specific discussions, but my sense is that there were discussions. It may be more informal than formal, as I recall.

Mr. CHERTOFF. Now, in the afternoon of that Thursday, were you involved in preparing with others for a trip that was to take place to Little Rock the following morning?

Ms. WILLIAMS. Yes, I was somewhat involved.

Mr. CHERTOFF. Where were you during the afternoon of the 22nd from about 3 p.m. until about 5 p.m.? Let's start at 3 p.m. Where were you around 3 p.m.?

Ms. WILLIAMS. I don't know. I think I was in my office, in room 100.

Mr. CHERTOFF. That's in which building?

Ms. WILLIAMS. That's in the Old Executive Office Building.

Mr. CHERTOFF. Did you receive a message shortly after 3 p.m. that Bill Burton from the Chief of Staff's Office was trying to reach you?

Ms. WILLIAMS. I don't recall receiving a message, but in terms of the documents which were sent to the Committee, I know that my staff looked and saw a message from Mr. Burton, so I don't recall speaking to him, but there was a message.

Mr. CHERTOFF. So you don't remember the message, but you've simply seen a document now that records the message?

Ms. WILLIAMS. That's correct.

Mr. CHERTOFF. About 20 minutes later, did Mr. Neuwirth from the White House Counsel's Office give you a call?

Ms. WILLIAMS. According to the documents that I sent to the Committee, there's an indication there was a call from Mr. Neuwirth.

Mr. CHERTOFF. Again, that's on a message pad?

Ms. WILLIAMS. Pardon? I'm sorry?

Mr. CHERTOFF. That's on a message pad?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. You don't remember this yourself?

Ms. WILLIAMS. No, only since I've—only since we've looked, produced it and I've since seen it in the course of my deposition with the Senate.

Mr. CHERTOFF. Do you know whether Mr. Burton and Mr. Neuwirth were in the room in which the document review by Mr. Nussbaum in the presence of law enforcement officers was taking place?

Ms. WILLIAMS. I do not know that. I recall that one of them may have been in the room, but I don't have any firsthand knowledge of it.

Mr. CHERTOFF. Now, after the message at 3:05 and the message at 3:25, did there come a point in time that you actually talked to Bernie Nussbaum?

Ms. WILLIAMS. Yes, sir.

Mr. CHERTOFF. How did that come about?

Ms. WILLIAMS. Mr. Nussbaum called me in my office. He said that he was—as I understand it, let me give you the gist of the conversation—that he was distributing the documents from Vince's office, and he asked me if I would be responsible for getting the personal documents of the President and Mrs. Clinton, which he was compiling, as I understood it, and get them to their personal lawyer, who was at the time Bob Barnett of Williams & Connolly.

Mr. CHERTOFF. Now, in this conversation that Mr. Nussbaum had with you, did he tell you whether he had just completed a session in which he went through the documents, and there were law enforcement officials present?

Ms. WILLIAMS. No, I don't recall him saying that to me.

Mr. CHERTOFF. You do remember him specifically telling you, though, that he had in mind a particular lawyer to which the documents were going to go?

Ms. WILLIAMS. Oh, yes. I'm pretty certain he said to get them over to the Clintons' personal lawyer. I don't know if he told me the name or if I just knew that that would be Bob Barnett.

Mr. CHERTOFF. He didn't indicate to you that he had any uncertainty about which lawyer the documents would be given to?

Ms. WILLIAMS. He didn't indicate, as I recall, any certainty or uncertainty. What I believe he said to me was would you get these over to the personal lawyer of the Clintons, who I believed, and I was right, was Bob Barnett of Williams & Connolly.

Mr. CHERTOFF. He didn't tell you which lawyer was going to be the one getting them?

Ms. WILLIAMS. I don't recall that he did, no.

Mr. CHERTOFF. Do you know whether in this period of time the Clintons used other lawyers for some of their various personal matters?

Ms. WILLIAMS. The only other person that I could think of would be—it seems to me with the filing of the Clintons' tax returns, they used a different—a tax specialist.

Mr. CHERTOFF. Was that a Mr. Berman?

Ms. WILLIAMS. Berman, no.

Mr. CHERTOFF. Did they use a Mr. Lyons?

Ms. WILLIAMS. No.

Mr. CHERTOFF. But you remember there was a separate tax specialist lawyer that they used?

Ms. WILLIAMS. Separate in the sense that this was a person who dealt with the taxes, but as I understood it, it was through the firm of Williams & Connolly. But on the issue of taxes, because the President and the First Lady make a formal accounting at tax time, they had moved beyond, I guess, general assistance at Williams & Connolly and sought a specialist in the area of tax.

Mr. CHERTOFF. Did you indicate to Mr. Nussbaum in the phone conversation that you understood that he wanted Mr. Barnett to get the documents?

Ms. WILLIAMS. I'm sorry, could you repeat that?

Mr. CHERTOFF. In your phone conversation with Mr. Nussbaum, did you tell him or did you confirm with him that Mr. Barnett was the one who was supposed to receive the documents?

Ms. WILLIAMS. No, I don't have any recollection that I specifically confirmed that with him.

Mr. CHERTOFF. You don't recall that he told you the lawyer to send them to?

Ms. WILLIAMS. No, sir, I do not.

Mr. CHERTOFF. But you in your own mind knew who the lawyer was who they should go to?

Ms. WILLIAMS. I had a pretty good sense.

Mr. CHERTOFF. From where?

Ms. WILLIAMS. From working every day at the White House and knowing Bob Barnett and from having had other contact with Bob Barnett.

Mr. CHERTOFF. Had Mr. Barnett previously told you he was expecting to get personal documents from the Clintons that were in Mr. Foster's office?

Ms. WILLIAMS. No, he had not.

Mr. CHERTOFF. Before this phone call from Mr. Nussbaum, had you had any conversation with either the President or the First Lady about how their personal documents should be handled?

Ms. WILLIAMS. No, I had not.

Mr. CHERTOFF. Now, after you got the call from Mr. Nussbaum, did you go over to the White House Counsel's Office?

Ms. WILLIAMS. Not immediately, but sometime shortly after.

Mr. CHERTOFF. When you went into Mr. Foster's office, what did you see?

Ms. WILLIAMS. Everything was pulled out, and there were stacks of files and documents everywhere.

Mr. CHERTOFF. What happened?

Ms. WILLIAMS. Mr. Nussbaum was there and he directed me to either a stack of files that were sitting on the coffee table or he directed me to a box in which there were files. I can't remember which, but files either in a box or on a coffee table, he pointed them out to me as the personal files that I was to collect and get to Bob Barnett.

Mr. CHERTOFF. So you just picked up the files and packed them up in a box?

Ms. WILLIAMS. As I said before, I'm not clear whether or not they were in a box when I was there, that he had them already arranged in a box or whether or not they were sitting in a stack, and I, in fact, got a box to put them in, but there were files that were clearly designated by Mr. Nussbaum as the files for transferring to the personal lawyer.

Mr. CHERTOFF. So Mr. Nussbaum had already made the selection of the files before you got there?

Ms. WILLIAMS. That's my understanding, yes.

Mr. CHERTOFF. What you did was either take the pile or take the box and arrange to have them removed?

Ms. WILLIAMS. Yes. Of course, not immediately.

Mr. CHERTOFF. So you didn't do any selection of files yourself?

Ms. WILLIAMS. No, I did have an occasion to do one selection of a file. Mr. Nussbaum had said to me when designating the files, these are the files to be taken. You might want to eyeball the room or take a quick look around to see if there's something that I've missed.

Mr. CHERTOFF. Let me make sure I understand this. You're telling us that Mr. Nussbaum called you in at the point at which the files he had designated a set of files, but then he asked you to look around the room and see if there was anything he had missed?

Ms. WILLIAMS. He asked me to take a look around—to eyeball—the remaining files to see if there were any that should be included.

Mr. CHERTOFF. What does that mean, "eyeball"?

Ms. WILLIAMS. The way I've tried to describe it is it's like the check when you're leaving a hotel.

Mr. CHERTOFF. You open drawers?

Ms. WILLIAMS. You open drawers, although in this case every drawer was open, it seems to me. You just look around to see if you've left anything, if anything catches your eye.

Mr. CHERTOFF. Did you eyeball the room?

Ms. WILLIAMS. It was not as complete as one might want, but I did take a look around. I mean, clearly, Bernie Nussbaum had put files together. I didn't think it was incumbent upon me to do a huge search, but I did look because he asked me to, and I pulled out—I saw a file that said "taxes" on it.

Mr. CHERTOFF. Where did you see that file?

Ms. WILLIAMS. Behind Vince's desk, there's a bookshelf credenza-like file. A file was pulled out, and I don't remember if the files were standing up or if they were laying down, but I saw on the tab "taxes," and I don't know if that was the whole label on it, but I know that "tax" was a part of it.

Mr. CHERTOFF. So this file marked "taxes" was part of a group of files, either in a drawer or stacked up on a table?

Ms. WILLIAMS. No.

Mr. CHERTOFF. Was it sitting by itself?

Ms. WILLIAMS. No, no, no. We're not talking about a table.

Mr. CHERTOFF. Credenza, I'm sorry.

Ms. WILLIAMS. In the credenza, which is a file drawer, they were either laying down flat where you could see the tabs sideways or they were standing up where you could see the tabs.

Mr. CHERTOFF. So you reviewed the tabs of the files?

Ms. WILLIAMS. I took a look, yeah.

Mr. CHERTOFF. You saw one marked "taxes"?

Ms. WILLIAMS. Uh-huh.

Mr. CHERTOFF. What did you do?

Ms. WILLIAMS. I picked it up and I put it on the table that had the other files that Mr. Nussbaum had directed me to take.

Mr. CHERTOFF. How many other files were there in that area where you found the file marked "taxes"?

Ms. WILLIAMS. Oh, I don't remember. Maybe a few. I don't really remember. I just remember the word jumping out.

Mr. CHERTOFF. Do you remember any of the names on any of the other files?

Ms. WILLIAMS. No.

Mr. CHERTOFF. Do you remember anything else about the other files?

Ms. WILLIAMS. No, because I think in my head, as the files had been described to me by Mr. Nussbaum, they were personal files, and I was trying to make a connection in my cursory look around about what would be considered a personal file. In my head, I thought OK, maybe a personal file would be something that had Chelsea Clinton's name on it, personal file to me meant taxes, so I connected with that file.

Mr. CHERTOFF. Now, this file marked "taxes," was that with a group of other personal files, or was it intermingled with files that you believe to be official files as well?

Ms. WILLIAMS. I don't know if I had any beliefs about the files. In my mind, there was a stack of files that Bernie had designated as personal files, which were on the coffee table, either in a stack or in a box. I can't remember which. Then there was the period in which I took a look around the room at Mr. Nussbaum's instruction and my eye caught a file that said "taxes."

Now, there could have been other personal files. I don't know that, but I wasn't making an overall judgment. Nothing clicked with me in terms of there being in that stack other personal files. I selected the one I thought was most in the category of personal file.

Mr. CHERTOFF. So you reached over and you pulled out this file marked "taxes"?

Ms. WILLIAMS. Yes, I did.

Mr. CHERTOFF. Did you open it?

Ms. WILLIAMS. No, I didn't.

Mr. CHERTOFF. You just went over and put it with the files to go to the residence?

Ms. WILLIAMS. Yes, I did.

Mr. CHERTOFF. From the outside of the file, from what you saw, you had no way of telling whether this was a file about the Clintons' taxes or a file about Mr. Foster's taxes, did you?

Ms. WILLIAMS. No, I did not.

Mr. CHERTOFF. Did you ask Mr. Nussbaum, is this a file I ought to take?

Ms. WILLIAMS. No, I did not.

Mr. CHERTOFF. Did you ask anybody else in the White House Counsel's Office if this is a file you ought to take?

Ms. WILLIAMS. No, I did not.

Mr. CHERTOFF. Was there a period of time when you were in the office there with Mr. Nussbaum that you and he actually sat down and went through a drawer of files which were personal files to the Clintons?

Ms. WILLIAMS. No, there was not at that time.

Mr. CHERTOFF. That didn't happen?

Ms. WILLIAMS. No, it did not.

Mr. CHERTOFF. Did it happen when you were in the office with Mr. Nussbaum when Deborah Gorham, Mr. Nussbaum's secretary, walked into the office?

Ms. WILLIAMS. Debbie was in and out of the office, yes.

Mr. CHERTOFF. Was there a point in time she offered to help Mr. Nussbaum go through an index or a list of the personal files?

Ms. WILLIAMS. Not while I was there, not that I recall, no.

Mr. CHERTOFF. That did not happen when you were there?

Ms. WILLIAMS. No, I don't recall that happening.

Mr. CHERTOFF. Did you or Mr. Nussbaum ask Ms. Gorham to come in and make any kind of a list or record of the files that were being removed or packed up to be removed from Mr. Foster's office and taken up to the residence?

Ms. WILLIAMS. No. Bernie called me in my office. I went over to Vince Foster's office. He designated a group of files that were personal. They were on the table. They were either in a stack or in a box. He asked me to take a look around to see if he had left anything out. My eye connected with a file marked "taxes." I picked it up and I put it on the stack.

Mr. CHERTOFF. That's the only file that you selected when you eyeballed the room?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Where was Mr. Nussbaum at this time?

Ms. WILLIAMS. Either he was in the room, in the doorway, or taking a call in his office.

Mr. CHERTOFF. But he was certainly in the vicinity?

Ms. WILLIAMS. Yes, he was.

Mr. CHERTOFF. You arranged to have somebody come and help you take those files up to the residence?

Ms. WILLIAMS. It wasn't much of an arrangement. I called out to someone who was sitting in the foyer of the Counsel's suite, a young guy that I thought was an intern, and said could you help me take these.

Mr. CHERTOFF. Was that Tom Castleton?

Ms. WILLIAMS. Yes, it was.

Mr. CHERTOFF. Did you pack those up in a box with him and give it to him to take out?

Ms. WILLIAMS. As I said before, I don't recall if they were already in a box, but if they weren't in a box, I know I put them in a box in order to carry them because I do remember looking for a top. I remember going into the copying room and looking for a top for a Xerox box.

Mr. CHERTOFF. Then Mr. Castleton was the one who physically picked up the box and took it out of Mr. Foster's office?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. You went with him?

Ms. WILLIAMS. Yes, I did.

Mr. CHERTOFF. On your way up to the residence, did you stop anywhere?

Ms. WILLIAMS. On my way up to the residence, did I stop anywhere?

Mr. CHERTOFF. Let me be clearer. Between the time you and Mr. Castleton walked out of Vincent Foster's office with the box, until the time you got up to the residence, did you stop and enter any other rooms?

Ms. WILLIAMS. I don't necessarily recall stopping. But, in thinking about this, I know that I stopped to pick up something, which I now believe were dresses or something, in Mrs. Clinton's office.

Mr. CHERTOFF. You remember stopping in Mrs. Clinton's office?

Ms. WILLIAMS. Yes, I do.

Mr. CHERTOFF. Now you remember that what you picked up were dresses?

Ms. WILLIAMS. I think that's what I had in my hand.

Mr. CHERTOFF. Is that a memory that you have recently come to?

Ms. WILLIAMS. No, in my deposition, when I started—when you asked me this question before and I started to tell you that, at that moment, I was advised by my lawyer that I didn't have to say exactly what the materials were.

Mr. CHERTOFF. Now, before you left Mr. Foster's office with Mr. Castleton, did you have any telephone conversations about the documents in Mr. Foster's office?

Ms. WILLIAMS. Yes, I did.

Mr. CHERTOFF. Tell us who you called.

Ms. WILLIAMS. I called Mrs. Clinton—I had three calls. I called Bob Barnett's office. I don't know if I spoke to Bob Barnett or if I spoke to the person who works with him in his office. I called Mrs. Clinton, who was in Arkansas, and then I called Carolyn Huber, an Assistant to the President who was working in the White House.

Mr. CHERTOFF. Now, you called Mr. Barnett's office to indicate that you were not going to be bringing the documents over?

Ms. WILLIAMS. It wasn't a matter of bringing the documents over, quite frankly, it was a matter of someone coming to pick the documents up. When I had talked to Mr. Barnett after speaking to Mr. Nussbaum, I had indicated that I was going to send some files over as soon as they got together, and he said that he would send someone to get them.

Although I don't remember this exactly, the logic of the phone call suggests to me that he said he would send someone over to pick them up.

Mr. CHERTOFF. So then, again, you called him up after you had gone through this procedure in Mr. Foster's office to tell him not to send someone?

Ms. WILLIAMS. I wouldn't necessarily describe it as a procedure, but what happened was I took several calls in my own office in the West Wing. I don't know if I took them in the vestibule of Mrs. Clinton's office, because the person who takes her calls sometimes takes calls for me, but I know I had several telephone calls back and forth, people calling me saying to pick up the phone.

So the day started getting a little later. I knew that I was going to Little Rock, or I had finally made a determination that I was going to go to Vince's funeral the next day. Quite frankly, I was tired. When I thought about the time it would take—if anyone has tried to get into the White House complex, the time it would take, both to get a messenger, clear them in and actually have them get in and collect the box, I decided I could be at home in that time, and I decided at that point that the sending and the waiting for someone to pick up the documents would have to wait until later. Then my next decision was, so what am I going to do with them.

Mr. CHERTOFF. So then you called Mr. Barnett and told him not to send someone over that day?

Ms. WILLIAMS. Yeah. If it wasn't Mr. Barnett, someone in his office, but I stopped that part of the——

Mr. CHERTOFF. Then you made a call to the First Lady?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Tell us, where did you reach her?

Ms. WILLIAMS. I went through Signal, so wherever they reached her. She was in Arkansas, but they reached her.

Mr. CHERTOFF. What did you tell her in that phone call?

Ms. WILLIAMS. I told her that there were personal files that weren't going to get to the lawyer because I was just tired, and I was going to put them in the White House, in the residence, and where did she want them.

Mr. CHERTOFF. Give us the entire conversation.

Ms. WILLIAMS. I couldn't give you the entire—I mean, that's what I remember. It was a very short conversation. I know I had three points that I wanted to make. I was tired, the files weren't going, I was going to put them in the residence, where did she want them—four points.

Mr. CHERTOFF. You're on the phone with Mrs. Clinton and you say to her there are personal files that are supposed to go to Mr. Barnett, but I'm not going to send them over. Is that your testimony?

Ms. WILLIAMS. You're forgetting a part of it, which is——

Mr. CHERTOFF. Give us the whole thing.

Ms. WILLIAMS. I'm tired. It wasn't an act of defiance. It was I'm tired. I'm not going to wait around for this. I'm going to put them in the residence, where would you like them.

Mr. CHERTOFF. I'm sorry, maybe I'm missing something. Had there been an earlier call with Mrs. Clinton about the fact that these files were going to be moved out of Mr. Foster's office?

Ms. WILLIAMS. No, I didn't have an earlier conversation with her about them.

Mr. CHERTOFF. So this is the first conversation you're having with her about documents in Vincent Foster's office; right?

Ms. WILLIAMS. Yes, that's correct.

Mr. CHERTOFF. You pick up the phone and after saying hello and whatever preliminary things are said, you said I'm tired, I'm not going to move the files, we're not going to wait around for the files to be picked up?

Ms. WILLIAMS. I'm sure that I said that there were files going to the personal lawyer. I'm not getting files over to Barnett. I'm going to—I'm too tired to deal with this. I'm going to put them in the residence, where do you want them.

Mr. CHERTOFF. Did she ask you what files you were talking about?

Ms. WILLIAMS. No, she did not.

Mr. CHERTOFF. Did she ask you where you were?

Ms. WILLIAMS. No, she did not.

Mr. CHERTOFF. Did she ask you how many files?

Ms. WILLIAMS. No, but let me suggest to you that I could have told Mrs. Clinton that I was going to put 44 elephants in the White House the day after Vince died and she probably would have said OK.

Mr. CHERTOFF. You're not suggesting that you just would pick up the phone and call Mrs. Clinton and say I'm going to put 44 elephants in the office, are you?

Ms. WILLIAMS. No, but I'm suggesting to you that one, when you have the kind of emotionally charged atmosphere that we had at the White House the day after Vince died, and two——

Mr. CHERTOFF. Two days after?

Ms. WILLIAMS. Two days—how soon should we be over our grief, one day, two days?

Mr. CHERTOFF. That is very understandable, Ms. Williams. I guess my question is, given the emotional state on that day and given that you were leaving early the next morning for Little Rock, what was the rush about moving the documents out of Mr. Foster's office?

Ms. WILLIAMS. Apparently—I don't know what the rush was or if there was a rush. What I know is that Mr. Nussbaum asked me to come and pick up files. Apparently I wasn't rushed to get them to the personal lawyer because they didn't get there, but since Bernie Nussbaum had asked me to take care of the personal files I felt as if I needed to place them someplace.

Mr. CHERTOFF. Why didn't you tell Mr. Nussbaum you were tired, you wanted to leave, they were packed up and you wanted to leave them in the office and have them removed at a later time?

Ms. WILLIAMS. I don't know why I didn't tell him that that day. I chose another course of action.

Mr. CHERTOFF. Did you see or speak to Susan Thomases that day?

Ms. WILLIAMS. Either Wednesday or Thursday.

Mr. CHERTOFF. She actually came to your office?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Was the office in the West Wing or was the office in the Executive Office Building?

Ms. WILLIAMS. In the Executive Office Building.

Mr. CHERTOFF. Does it refresh your recollection if I suggest to you that probably Thursday is the day?

Ms. WILLIAMS. It could be Thursday.

Mr. CHERTOFF. Do you remember approximately when during the day it was?

Ms. WILLIAMS. I don't know. For some reason, I want to think midmorning. I'm not sure.

Mr. CHERTOFF. What did you talk to her about when she came to visit you?

Ms. WILLIAMS. Mostly Susan was talking.

Mr. CHERTOFF. About what?

Ms. WILLIAMS. She was concerned about whether or not Vince's family would get any insurance money if it were a suicide, and she proceeded to give me a fairly long story about either a client or someone else she knew who had discovered that a person who had committed suicide, in fact, had some kind of chemical imbalance and in the end, with that discovery, the insurance company was responsive to the family.

Mr. CHERTOFF. Did she talk to you about anything else besides that?

Ms. WILLIAMS. No, she went on about that.

Mr. CHERTOFF. Did you speak to her at any other time on that day?

Ms. WILLIAMS. No, no, just when she came in my office that day is what I remember.

Mr. CHERTOFF. That's the only time you spoke to her that day?

Ms. WILLIAMS. What I remember is when she came into my office.

Mr. CHERTOFF. Is that the only time you spoke to her that day?

Ms. WILLIAMS. What I remember is when she came into my office.

Mr. CHERTOFF. You don't remember any other conversations?

Ms. WILLIAMS. What I remember is when she came into my office at that time.

Mr. CHERTOFF. Ms. Lieberman, not to leave you out—and this is my last question because I see my time has run out. On Thursday, July 22, 1993, did you have any conversations with Susan Thomases?

Ms. LIEBERMAN. I don't remember. I wouldn't remember.

Mr. CHERTOFF. You have no recollection?

Ms. LIEBERMAN. No, none.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Ms. Williams, good afternoon, and, Ms. Lieberman, good afternoon. I'd like to go to July 20, 1993, which is where we spent a lot of time this morning, and try to elicit your recollections of the events on the evening of July 20th, if I might, at this point, rather than jump ahead to the 22nd.

On the 20th, Ms. Williams, how did you learn that Vince Foster was dead?

Ms. WILLIAMS. Mrs. Clinton called me.

Mr. BEN-VENISTE. What do you recall about that conversation?

Ms. WILLIAMS. I had two calls from Mrs. Clinton. The first call was to find out where I was, and she wanted me to stay there because she was going to be calling when she landed, I believe, so she could get to a ground phone, which didn't strike me as atypical because we do that lots of times because we're either cut off from the airplane or, if you want to have a whole conversation, that you try to arrange to have a conversation.

Mr. BEN-VENISTE. So you received word that Mrs. Clinton wished to speak with you, she phoned you from an airplane and said she would be landing shortly?

Ms. WILLIAMS. That's correct.

Mr. BEN-VENISTE. Then what happened?

Ms. WILLIAMS. Then—I don't know how much time there was between that call and the next call, but it seems like a short period of time—then she called again, and I remember the first thing she said was either sit down or are you sitting down, which struck me as very strange, and then she said—the only words I remember that she said is that Vince is dead. Vince Foster is dead.

Mr. BEN-VENISTE. What did you say?

Ms. WILLIAMS. I don't think I said anything. I don't think I could speak.

Mr. BEN-VENISTE. What happened next?

Ms. WILLIAMS. No recess, OK. Just keep at this.

Mr. BEN-VENISTE. Take your time.

Ms. WILLIAMS. I couldn't believe he was dead.

Mr. BEN-VENISTE. Did there come a time shortly thereafter when you spoke with Mrs. Lieberman?

Ms. WILLIAMS. Almost immediately. I don't know when I hung up with Mrs. Clinton, but almost immediately I called Evelyn, and I don't know if I told her or if she had already heard. I probably said something hysterical, like I've got to go somewhere, I've got to do something, I'm leaving, I'm going to the White House or whatever. She said stay there, I'm coming to get you.

Mr. BEN-VENISTE. Mrs. Lieberman, perhaps you could pick up the narrative at this point, if you would. Do you recall receiving the phone call Ms. Williams has just alluded to?

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. At that time, what was your position?

Ms. LIEBERMAN. I was Maggie's assistant.

Mr. BEN-VENISTE. Were you close friends as well?

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. What do you recall about the conversation?

Ms. LIEBERMAN. Maggie called and she said either Vince was dead or Vince committed suicide. She was very upset, very upset, and I just said stay there, I'm coming to get you, and I put down the phone. I mean, it was very brief.

Mr. BEN-VENISTE. What did you then do?

Ms. LIEBERMAN. I put on my shoes and I got in the car and I went to get her.

Mr. BEN-VENISTE. Do you recall how you were dressed?

Ms. LIEBERMAN. If it was late at night, and I was home, I'm sure I had on my uniform: a T-shirt and a pair of shorts.

Mr. BEN-VENISTE. It was July, and it was Washington, DC?

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. What occurred next?

Ms. LIEBERMAN. I went to get Maggie, and she was very upset, and we drove over to the White House.

Mr. BEN-VENISTE. Did you know of the relationship Ms. Williams had with Vincent Foster?

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. Could you describe from your own vantage point what that relationship was?

Ms. LIEBERMAN. In addition to being colleagues, Maggie really respected him professionally. They were very good friends, and Maggie doesn't make close friends easily. She liked him very much, and they just had a very nice friendly and professional relationship. She trusted him very much.

Ms. WILLIAMS. I do make friends easily.

Ms. LIEBERMAN. Close friends.

Mr. BEN-VENISTE. Mrs. Lieberman, what do you recall about what happened once you went to Ms. Williams' home?

Ms. LIEBERMAN. I can't remember if I went in to get her or I sounded the horn or if she was waiting outside. I don't remember. I just know she got into the car and she was crying, she was pretty hysterical.

Mr. BEN-VENISTE. What did the two of you discuss in terms of what you would do or where you would go?

Ms. LIEBERMAN. I'm not sure we really had a discussion. I probably just said let's go to the White House, or I don't even know if we had that discussion. We just drove and went there.

Mr. BEN-VENISTE. Why was it clear to you that that was the place to go?

Ms. LIEBERMAN. I guess—where else do you go? I guess there's no real decision being made. Somebody had died. It was horrible. I guess we wanted to see if we were needed. I didn't know what else to do, and we just drove over there. I don't think there was much talk of where should we go and what should we do.

Mr. BEN-VENISTE. You then arrived at the White House?

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. Ms. Williams.

Ms. WILLIAMS. I was just remembering that as soon as I hung up with Evelyn or Mrs. Clinton, it seemed to me that my beeper started going off, and I do remember seeing Gearan, call Gearan—I do remember Gearan's name on my beeper, I believe.

Mr. BEN-VENISTE. This would have been Mark Gearan from the Communications Office?

Ms. WILLIAMS. Yes.

Mr. BEN-VENISTE. Did you see Mr. Gearan when you arrived at the White House?

Ms. WILLIAMS. Yes, at some point during the evening, I did see him.

Mr. BEN-VENISTE. Could you describe the scene as you arrived at the White House that evening?

Ms. WILLIAMS. Let's see. We went over to the West Wing, to the entrance, and whatever guard was sitting there, we asked him to unlock Mrs. Clinton's door to her office.

Mr. BEN-VENISTE. Could we put the chart of the West Wing up on the screen, please? If the magical dot could appear, I would ask you to indicate where Mrs. Clinton's office was.

Ms. WILLIAMS. Me?

Mr. BEN-VENISTE. Yes. Is the dot——

Ms. WILLIAMS. On this diagram?

Mr. BEN-VENISTE. Yes.

Ms. WILLIAMS. OK. I guess where it is right there.

Mr. BEN-VENISTE. OK. You asked the guard to unlock that door. Is that what your recollection is?

Ms. WILLIAMS. Right. When you think of Mrs. Clinton's office, there's a very small foyer and there's her office proper, and so we were asking to unlock the front door.

Mr. BEN-VENISTE. Majority counsel has indicated that there may be inaccuracies in this schematic, so don't take this as being a scale model or——

The CHAIRMAN. The elevator and stairs are reversed.

Mr. BEN-VENISTE. If the photographer would not mind moving slightly. Thank you.

Did you have a key to that office?

Ms. WILLIAMS. No, I do not.

Mr. BEN-VENISTE. Do you remember the name of the guard who opened that office?

Ms. WILLIAMS. No, not at all.

Mr. BEN-VENISTE. After that office was opened, then what happened?

Ms. WILLIAMS. I think I called myself—first, you should know my habit. During that period of time, I had an office that's next door to Mrs. Clinton's office. My habit, when Mrs. Clinton was in her office, was to more or less be in the foyer of her office using the phone. People would be coming in and out so, even though I had an office right next door, my habit was to be in that foyer.

I think I thought that there would be a reason to have someone sitting there. I thought there would be calls to make or calls coming in, and so I asked Evelyn to sit there in the foyer.

Then I left there and I went down to Mark Gearan's office which is on the first floor of the White House. I went into his office. A lot of people from the White House seemed to be gathered there. I sat down. I didn't have much conversation with anyone. I spoke briefly, I think, with Howard Pastor. Then Mark Gearan gave me a draft of the statement that the President and Mrs. Clinton were planning to release with respect to Mr. Foster's death.

Mr. BEN-VENISTE. Then what did you do?

Ms. WILLIAMS. Then I went back upstairs. I had the statement in my hand. As I recall—I don't know if I gave a statement to Evelyn. I think that I went into the copying room to copy it. I went into my office at some point.

Mr. BEN-VENISTE. That is two doors down from the dot?

Ms. WILLIAMS. OK. All right. There are three dots now.

Mr. BEN-VENISTE. Now there are two?

Ms. WILLIAMS. OK. All right. So you're leaving the dots in?

Mr. BEN-VENISTE. Yes. That's your office and the first dot reflects where you recollect Mrs. Lieberman was sitting?

Ms. WILLIAMS. Right.

Mr. BEN-VENISTE. Does that comport with your recollection, Mrs. Lieberman?

Ms. LIEBERMAN. Right.

Mr. BEN-VENISTE. I'm sorry, I couldn't hear you.

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. Thank you. Ms. Williams, will you continue, please.

Ms. WILLIAMS. It's my sense that I was going back and forth between being totally hysterical about what had happened and trying to get a handle on the kinds of things we might have to do with respect to Mrs. Clinton and the aftermath of Vince's death.

For instance, in my mind somewhere, I understood Mrs. Clinton had an event—at the time I thought it was Wednesday—that was going to be the day after Vince's death, and so I wanted to get a hold of the schedule. During this period, they would slip a copy of Mrs. Clinton's schedule and the President's schedule underneath the door in an envelope, and I believe that I went to my office looking for the schedule. I thought to make myself useful, if we needed to cancel an event on Wednesday, I could get the ball rolling in that regard.

Mr. BEN-VENISTE. So you had a copy of the draft statement that was being worked on in connection with the White House announcement of Mr. Foster's death——

Ms. WILLIAMS. Uh-huh.

Mr. BEN-VENISTE. —or the White House comment upon the announcement of Mr. Foster's death, and a Manila envelope that contained the First Lady's schedule; is that correct?

Ms. WILLIAMS. That's what I believe.

Mr. BEN-VENISTE. OK. Now, did there come a time when you entered the Counsel's Office?

Ms. WILLIAMS. Yes.

Mr. BEN-VENISTE. Would you tell us the circumstances of that?

Ms. WILLIAMS. As I said in my statement, when I got off the elevator, first coming on to the second floor, I couldn't look in the direction of the Counsel's Office. I just looked away. At some point—and I don't necessarily remember the sequence of my movements in the copying room, into the foyer of Mrs. Clinton's office, but at some point, it seems to me as I was walking toward the elevator or coming out of my office, I was passing the Counsel's Office.

I looked, and there was a light coming out of Vince's office. The office has two offices and a foyer and Vince's office is in a corner, and so there was a light that seemed to come from Vince's office.

Mr. BEN-VENISTE. What did you do, Ms. Williams?

Ms. WILLIAMS. I walked into Vince's office.

Mr. BEN-VENISTE. Who, if anyone, was there at that time?

Ms. WILLIAMS. Patsy Thomasson was sitting at Vince's desk.

Mr. BEN-VENISTE. Did you speak with her?

Ms. WILLIAMS. I remember that she had tears streaming down her face, and I remember what she said to me exactly. She was sitting at the desk. She had lifted up one or two pieces of paper—I don't know exactly what she lifted up on the desk, but I remember her saying we could give—and I'm not sure these are her exact words, but something to the effect that we could give Lisa some

comfort if there was a note or, if there was a note, we could give Lisa some comfort.

Mr. BEN-VENISTE. Did she indicate that she was looking for a note?

Ms. WILLIAMS. No. I mean, that was the first time I had heard anyone talk about a note that I can recall. It stuck out in my mind because, at first, I couldn't figure out what Lisa she was talking about because I have a Press Secretary whose name is Lisa Caputo and she was in Arkansas, and I didn't hear the relevance. Later, I, of course, figured out it was Lisa Foster, Vince's wife, that she was referring to.

Mr. BEN-VENISTE. Is it fair to say that you were not thinking all that straight at that point, that evening?

Ms. WILLIAMS. It wasn't one of my more lucid times.

Mr. BEN-VENISTE. Now, did you see Mr. Nussbaum at some point?

Ms. WILLIAMS. Yes. Bernie walked into the office while I was in there.

Mr. BEN-VENISTE. Could you describe Mr. Nussbaum's demeanor at that point?

Ms. WILLIAMS. He was pacing and scratching the back of his head and trying to think of something to say to either of us.

Mr. BEN-VENISTE. What were you doing?

Ms. WILLIAMS. I was sitting on the couch in the corner, weeping.

Mr. BEN-VENISTE. About how long did you stay in Mr. Foster's office?

Ms. WILLIAMS. I don't think that I was there for a very long time. I really just don't remember how long, but I think of it as briefly.

Mr. BEN-VENISTE. What do you recall about the circumstances of leaving the office?

Ms. WILLIAMS. As I said earlier, I can't recall who left first, if Bernie left first or I left first. I concluded, because I have a snapshot of myself standing behind Bernie in the well of the staircase, that he left before me, but not much before.

Mr. BEN-VENISTE. When you left the office, Ms. Williams, again, did you take any material of Mr. Foster's from that office?

Ms. WILLIAMS. No, I did not.

Mr. BEN-VENISTE. Did anyone ask you to take any material, files, folders, boxes, any materials from that office that night?

Ms. WILLIAMS. No.

Mr. BEN-VENISTE. Did you see either Mr. Nussbaum or Ms. Thomasson or anyone else take any material from Mr. Foster's office and leave with it?

Ms. WILLIAMS. No, I did not.

Mr. BEN-VENISTE. Did there come a time when you were asked to give testimony about this subject matter before the Independent Counsel and the Grand Jury?

Ms. WILLIAMS. There came a lot of times when I was asked to give testimony about this matter.

Mr. BEN-VENISTE. Mr. Chairman, I wonder whether it wouldn't be out of order to request that perhaps Mr. Dennis enlighten us on one or two things contained in his affidavit.

The CHAIRMAN. I have no objection.

Mr. BEN-VENISTE. Mr. Dennis, you have represented Ms. Williams in connection with the inquiries made of her, both of this Committee and, I take it, those in connection with the Independent Counsel investigation, is that correct, sir?

Mr. DENNIS. That's correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. You are someone who is well known to me, but I wonder whether you would be kind enough to provide this Committee with your background. I know you as someone who had held Federal office, high Federal office, both in the Justice Department and the U.S. Attorney's Office for Philadelphia. But could you elaborate on that, please.

Mr. DENNIS. Certainly. I was formerly the Assistant Attorney General for the Criminal Division in the Bush Administration under Attorney General Dick Thornburgh.

Mr. BEN-VENISTE. What years were those, sir?

Mr. DENNIS. 1988 to 1990. From 1983 to 1985, I was U.S. Attorney for the Eastern District of Pennsylvania in Philadelphia. From 1980 to 1983, I was Chief of the Narcotic and Dangerous Drug Section for the Criminal Division in Washington, DC under Philip Heymann. From 1975 to 1980, I was an Assistant U.S. Attorney in the U.S. Attorney's Office in the Eastern District of Pennsylvania.

Mr. BEN-VENISTE. So it would be fair to say that you have had a wide range of prosecuting experience culminating in, essentially, the highest position in the Justice Department regarding the Criminal Division, Chief of the Criminal Division?

Mr. DENNIS. That's correct, regarding Federal prosecution.

Mr. BEN-VENISTE. Now, according to your affidavit, there came a point when you were advised that someone not described further had indicated that Ms. Williams had been seen removing files on the evening of July 20, 1993. Is that a fair summary of what you were told?

Mr. DENNIS. Yes, that was the thrust of the representation being made to me by Mr. Mark Stein of the Office of Independent Counsel.

Mr. BEN-VENISTE. At that point, according to your affidavit, I take it you suggested in view of this situation that Ms. Williams might consider taking a polygraph examination, a lie detector test?

Mr. DENNIS. Yes, I recommended to her that she submit herself to a polygraph test.

Mr. BEN-VENISTE. In connection with your extensive experience as a Federal prosecutor and a high official of the Justice Department, did you from time to time have use of polygraph examiners?

Mr. DENNIS. Yes, quite extensively, particularly in the investigation involving leaks in the Bill Gray case. I think that was probably the most extensive use of polygraphs that I was engaged in when I was in the U.S. Department of Justice.

Mr. BEN-VENISTE. Without further waiving any attorney-client privilege, I take it it was your suggestion that Ms. Williams submit herself voluntarily to a polygraph examination?

Mr. DENNIS. That's correct.

Mr. BEN-VENISTE. Who did you select in terms of the person to perform that examination?

Mr. DENNIS. Mr. William Anderson, who was formerly for 27 years a special agent of the Federal Bureau of Investigation spe-

cializing in polygraphs, and for the past 15 years or so had conducted polygraphs as a private polygrapher as a part of his private investigation business, as well as in connection, I suppose, with—as an adjunct to his position as a Professor at Westchester State University in criminology.

Mr. BEN-VENISTE. Did you select him both on the basis of his substantial FBI experience, both as a polygrapher and a teacher of other FBI polygraphers, as well as your personal knowledge of his expertise?

Mr. DENNIS. I chose him on the basis of his reputation. I'm not sure whether he was a formal instructor of polygraphy within the FBI, but his reputation was that—he had an excellent reputation as a polygrapher.

Mr. BEN-VENISTE. Ms. Williams then took the examination?

Mr. DENNIS. Yes, she did.

Mr. BEN-VENISTE. Were you furnished with a copy of the examination?

Mr. DENNIS. I was furnished with a copy after he advised me of the results orally. He provided me with a written confirmation of that.

Mr. BEN-VENISTE. You have distributed copies of that?

Mr. DENNIS. Yes, I have. It's a letter—the report is a letter dated August 1, 1994.

Mr. BEN-VENISTE. What were the questions put to Ms. Williams?

Mr. DENNIS. The precise questions as reported to me by Mr. Anderson were, "Did you remove any documents from Foster's office that night?" Her response was no. The second question was, "To your personal knowledge, did anyone remove documents from Foster's office that night?" Her answer was no. The third question was, "Did you discuss removing any documents, excepting a suicide note, from Foster's office that night?" Her response was no. The fourth question was, "Were you aware that night of others discussing document removal, excepting a suicide note?" Her response was no. The fifth question was, "Do you now know of anyone removing documents from Foster's office that night?" Her response was no. The last question was, "Excepting a suicide note, do you now know of any discussion by anyone about the removal of documents from Foster's office that night?" Her response to that question was also no.

Mr. BEN-VENISTE. Now, those were the questions and the responses. What did the expert provide you in his report in terms of his opinion as to Ms. Williams' truthfulness in giving those answers?

Mr. DENNIS. The final paragraph of the letter gives his opinion of the report. It says "in this comparison"—meaning comparison of control questions with issue questions, which are the questions I read—"it was seen that Williams' recorded emotional responses to controls was equal to or greater than her responses to issue questions. Based on this comparison, it is my opinion Williams was not deceptive (was truthful) when she answered these questions above as she did."

Mr. BEN-VENISTE. Did you approach the Independent Counsel's Office with the suggestion that the Independent Counsel select any polygrapher of their choosing and that Ms. Williams would submit

to a polygraph test administered under the supervision of the Independent Counsel?

Mr. DENNIS. Yes, I did.

Mr. BEN-VENISTE. Approximately when did that occur?

Mr. DENNIS. The date of the polygraph was September 16, 1994. I don't recall precisely when I approached the Office of Independent Counsel, but I would say it was probably about 2 weeks prior to that.

Mr. BEN-VENISTE. Can you tell us, if you know, the name and the agency of the polygrapher who the Independent Counsel selected?

Mr. DENNIS. I don't remember the agent's name, although it may be in my notes, but I know he was a polygrapher with the FBI.

Mr. BEN-VENISTE. So the Independent Counsel also relied on the FBI in terms of training and, indeed, a current FBI polygrapher to administer the test to Ms. Williams?

Mr. DENNIS. That's correct.

Mr. BEN-VENISTE. Were you advised, Mr. Dennis, of the result of that polygraph examination independently selected and administered by the Independent Counsel?

Mr. DENNIS. Yes, I accompanied Ms. Williams to the examination. I was not present during the examination itself. After the examination, the polygrapher did share with me, in the presence of the case agent, his conclusion that she was not deceptive in her responses. That she, in essence, had not removed any documents from Mr. Foster's office that night.

Mr. BEN-VENISTE. I see that my time is up, Mr. Chairman. Thank you very much.

Thank you, Mr. Dennis.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Dennis, just to make full disclosure here, we were colleagues together at the Justice Department for a period of time when I was U.S. Attorney in New Jersey.

Mr. DENNIS. Yes.

Mr. CHERTOFF. I just want to ask you a couple of questions about this polygrapher and these polygraph tests. In your experience, of course, polygraphy tests are not admissible in court.

Mr. DENNIS. That's correct.

Mr. CHERTOFF. Now, in this particular case, you did not initially go to the Independent Counsel and suggest a polygraphy test; correct?

Mr. DENNIS. I had Ms. Williams submit to Mr. Anderson's polygraph test before I went to the Office of Independent Counsel.

Mr. CHERTOFF. So before you decided whether you were going to go to the Office of Independent Counsel and have him set up a polygraphy test with an FBI agent, you first had Ms. Williams have her own test with a private polygrapher?

Mr. DENNIS. That's correct. But I might add, Mr. Chertoff, I never had any doubts that she would pass either or both polygraphs.

Mr. CHERTOFF. But you wanted to go through a dry run first?

Mr. DENNIS. I wanted to have Ms. Williams submit to a polygraph, in part, because—a private polygraph because I wanted to make sure that there was not going to be a problem based on her

emotional state. I wanted to make sure that we could formulate questions which would present—give her a fair opportunity to be judged by a polygraph test. So, in part, my consultation with Mr. Anderson, aside from just having him conduct the test, was after going through the details of the circumstances of this event, the details of what I was told by the Office of Independent Counsel, to ask his advice as to whether or not he thought that a test would be revealing or valid. He advised me that it would be. We submitted to the test.

Ms. WILLIAMS. I wanted to say something——

Mr. CHERTOFF. Sure.

Ms. WILLIAMS. —on this dry run business. First of all, no one told me it was a dry run. I thought it was the polygraph test, and in the discussion I had with Mr. Anderson, the polygrapher, who essentially tried to talk me out of taking it because he said if you are not telling the truth, we will discover you, he spent a lot of time suggesting that I might want to think very seriously before doing this.

So whether or not Mr. Dennis thought of it as a dry run, I thought of it as a real polygraph test and that is the way in which I conducted myself.

Mr. CHERTOFF. Just to be clear on this, and I guess I put it to either Mr. Dennis or Ms. Williams, you understood, Ms. Williams, that the polygrapher, Mr. Anderson, was one retained by your attorney; right?

Ms. WILLIAMS. Right. I trusted that my attorney would retain the very best polygrapher and someone who would weigh in conservatively. I trusted that my attorney would get someone who would give me a real polygraph test or else what good would it do?

Mr. CHERTOFF. You understood, then, that after that polygraph test was taken, that test would then be submitted to your attorney; right?

Ms. WILLIAMS. Yes, I understood that.

Mr. CHERTOFF. Now, Mr. Dennis, am I correct that you didn't have an arrangement with the Independent Counsel that you were going to submit the result of that private polygraph test no matter how it came out; right?

Mr. DENNIS. No, that was not the circumstance, although I did advise the polygrapher—the FBI polygrapher at the time that had been retained by the Office of Independent Counsel—before he subjected Ms. Williams to the test that she had been polygraphed previously. I told him, specifically, that I wanted him to know that in the event that he thought it might affect the validity of his test. He said that it did not.

I also offered to let him see the results of the test. He said he did not want to do that and so the test proceeded. So that's the only conversation that I had with the Office of Independent Counsel about the earlier examination.

Mr. CHERTOFF. That conversation occurred after you had gotten the results of the private polygraphy test, and you then consulted with Ms. Williams and decided to have her volunteer to take a test with the Independent Counsel?

Mr. DENNIS. I don't want to give you the wrong impression. There are two things here. First of all, I told Ms. Williams, with

regard to why a polygraph would be advisable, that it was my belief that this was an issue about her reputation more than anything else, that hearings were inevitable, that it was—it seemed impossible to me to resolve this conflict in the statements between she and this unknown person, a person unknown to me, and that I thought that we needed to have polygraph results as at least a way of resolving that issue. So to her the polygraph, however it came out, could be the subject of an inquiry at the hearing.

She certainly understood that if she took a polygraph and did not pass the polygraph, she could be asked about that in the hearing and she would have to respond with regard to that.

Now, with regard to my own——

Mr. CHERTOFF. Excuse me, Mr. Dennis, but you did know if she took the test and the result was unfavorable that she could not be asked about it in a Federal proceeding involving the Grand Jury?

Mr. DENNIS. I'm not so sure she could not be asked about it. I mean, it's not—I don't know whether the attorney-client privilege would apply to whether she had taken a polygraph or not. But, even if that were the case, clearly in a setting such as this asserting the attorney-client privilege about a matter of that importance would have been impractical, and she understood that she would have to answer questions about the polygraph, even if privately given.

Mr. CHERTOFF. Finally, let me ask you this, just to be clear. The only questions on which you volunteered Ms. Williams to be polygraphed were the questions that are set forth in your affidavit, which you've submitted, relating to whether there was a removal of documents from the office of Vincent Foster on July 20, 1993; right?

Mr. DENNIS. No, that's not true. The polygraph was to be conducted on the issue around which there was a dispute in testimony, and that was the subject of the removal of documents on the 20th. There was never any discussion with the Office of Independent Counsel or requests from them that she be polygraphed with regard to any other subject.

So it never came up; it wasn't a matter that I took the position necessarily that she could not be polygraphed on other subjects, although I must say that if that had come up, it would have required a showing to me that a polygraph would be really helpful. In this situation, I thought it would be, and other situations were not raised by Independent Counsel.

Mr. CHERTOFF. I'm sorry, Mr. Dennis, one thing I wasn't—did the Independent Counsel ask you to have a polygraph conducted?

Mr. DENNIS. No.

Mr. CHERTOFF. You made the decision?

Mr. DENNIS. I made the offer and they accepted.

Mr. CHERTOFF. You made the offer after having, in your own mind, concluded it would be useful on the topic of removal of documents?

Mr. DENNIS. Yes, both to the Office of Independent Counsel, because, as I put it to Mr. Stein, I said do you think it would be helpful to have the results of a polygraph to assist you in resolving any questions you have in your mind about credibility, who is more ac-

curate or who is telling the truth with regard to the document removal issue, and he said yes, and I made the offer.

Mr. CHERTOFF. You made the offer after you had done the private polygraph test?

Mr. DENNIS. That's correct.

Mr. CHERTOFF. You did not make such an offer with respect to any of the other issues about which she testified?

Mr. DENNIS. That wasn't even a topic of discussion between Mr. Stein and I, so we didn't negotiate it out. It just never came up.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Mack, would you want to forgo this for about a minute and then start new?

Senator MACK. Yes.

The CHAIRMAN. Senator Sarbanes.

Senator DODD. Thank you, Mr. Chairman. Welcome both you, Ms. Williams, and you, Ms. Lieberman. First of all, Mr. Dennis, just out of curiosity, you've had quite a bit of experience listening to Mr. Ben-Veniste talk about your years as an Assistant U.S. Attorney and then with the Justice Department and as a U.S. Attorney. How often would you guess, in a ballpark figure, you have been involved in polygraphs?

Mr. DENNIS. Oh, in terms of investigations in which polygraphs were used, I would say—oh, gee, 10 or 11 times. That's about all.

Senator DODD. Based upon your knowledge and experience today, given the sophistication, how reliable and useful do you find polygraphs?

Mr. DENNIS. I think it depends upon the setting. I think as an investigative tool that they are useful. In a situation in which more reliable forms of evidence are not available and will not get you where you want to go, I think it gives you an indication. It's not admissible in a court of law. I agree with that, and I'm not submitting this polygraph as conclusive evidence, but I think it gives an indication where you really have no other way of getting at the truth.

Senator DODD. Do we use them or have they been used in the highest level of national security matters, to your knowledge?

Mr. DENNIS. No question. Certainly in our national security agencies, in the FBI, in the investigating divisions in our military, they are used extensively. They are used extensively in investigations, whether they be criminal investigations or administrative investigations. They are certainly used for security investigations, and it's my understanding that they can be the basis for a discharge under certain circumstances. They are used for screening individuals who might be being considered for security clearances.

So they do have a wide acceptance in many contexts in which there the results can have a very serious and significant impact on the individual to whom they are administered.

Senator DODD. Thus, the wide extensive use would indicate the high degree of reliability people place on the results?

Mr. DENNIS. Yes, that's true.

Senator DODD. Just to review here the bidding, there were two polygraphs given of Ms. Williams, and in both cases, regarding the contradictory testimony, Ms. Williams was found to be truthful in her statements. Is that the case?

Mr. DENNIS. That's correct.

Senator DODD. Let me, if I can, Ms. Williams, turn to July 20, 1993, and, again, I realize it is painful to even talk about this and even recall conversations, but I would like to just—in the conversation that you had—as I gather, you had two conversations with Mrs. Clinton: one from the plane that just wasn't clear, breaking up, whatever; said you would get a call when she landed on the ground. Was that how——

Ms. WILLIAMS. Right, that's correct.

Senator DODD. Mrs. Clinton was going to Arkansas; this was a planned trip to Arkansas?

Ms. WILLIAMS. Yes, it was.

Senator DODD. Do you recall what the reason for that trip was?

Ms. WILLIAMS. I do recall one of the events, Arkansas Children's Hospital event, which she was doing. But as I understand it, as I recall, she had been——

Senator DODD. From where was she coming?

Ms. WILLIAMS. She was coming from California, and it had been a fairly long trip.

Senator DODD. Would this have been a long-scheduled planned visit to go to Arkansas?

Ms. WILLIAMS. Oh, yes, yes.

Senator DODD. So when you talked with her on the 20th, when you had the conversation finally, however brief the conversation, but the conversation in which she informed you of Mr. Foster's death, at any point in that conversation did Mrs. Clinton refer to any files that she was interested in having you look at or retrieve?

Ms. WILLIAMS. No, I don't recall her——

Senator DODD. Did she make any requests of you to deal with any files at all in that conversation on the 20th?

Ms. WILLIAMS. No. She did not.

Senator DODD. There were no instructions that you were given to handle certain files or to remove certain files or to in some way protect certain files in that conversation?

Ms. WILLIAMS. I believe the intent of her call was to tell me that Vince Foster was dead. Past that, as I said before, I don't remember anything else in the conversation. But given the tenor of the conversation, I can't imagine that anything else was said other than that.

Senator DODD. Now, did you have a conversation with Mrs. Clinton on July 21st, do you recall?

Ms. WILLIAMS. On the Wednesday, the day after?

Senator DODD. I'm presuming so, yes, that Wednesday, the 21st.

Ms. WILLIAMS. Yeah, yes. Yes, I did have a conversation with her on the 21st. I also had a conversation with her very late in the evening on the Tuesday, the 20th.

Senator DODD. Again, any conversations about any files in that conversation?

Ms. WILLIAMS. No.

Senator DODD. On the 21st, any conversation about any files on that date?

Ms. WILLIAMS. No. On the 21st she apparently had talked to Tipper Gore at some point, and she had encouraged me to go and spend some time talking to Tipper Gore because, I guess, of her ex-

perience in terms of mental health issues. The one instruction that she did give me—or the suggestion was to somehow work out with Tipper a way so that people in the office who needed counseling could get counseling.

Senator DODD. Now, let me quickly jump, if I can, to the 22nd. On July 22nd, you had a conversation with Mr. Nussbaum about what to do with the Clinton personal files that were in Vincent Foster's office; is that correct?

Ms. WILLIAMS. That's correct.

Senator DODD. Can you share with us again the substance of that conversation?

Ms. WILLIAMS. Mr. Nussbaum asked me to get personal files that he had gathered from Vince Foster's office over to Bob Barnett, the Clintons' personal lawyer.

Senator DODD. Other than the one file that had the label "taxes" on it, you were not involved in the accumulating of those files; they had already been pulled together by Mr. Nussbaum or someone else? Did you know whether or not Mr. Nussbaum did it or someone else?

Ms. WILLIAMS. I assumed he did.

Senator DODD. Yeah. Can you give us some idea of what, generally, would be in the personal files, what sort of information would there be generally? I don't mean in detail. Obviously, they're personal, the Clintons' personal property, but just give us—you said something earlier about their daughter, that her name might be on a file there—some idea of what we're talking about.

Ms. WILLIAMS. The reason why I had thought of their daughter was because, as I remember, Vince was working on the issue of the blind trust for the Clintons, and he had, before he died, a question about certain assets that he believed to be a gift from Chelsea's grandfather to her.

So, in my mind, I had a general view of what personal would be, taxes, anything that would have Chelsea's name on it. I didn't know the full range of categories.

Senator DODD. At any point in your conversation with Mr. Nussbaum or at any point that day, was there any indication from Mr. Nussbaum that those files included anything but personal files? Very specifically, did the words Whitewater or Travel Office specifically come up where you were instructed by Mr. Nussbaum to include those files or move those files? Did those words or that discussion at any point occur in your conversation with Mr. Nussbaum regarding the handling of these personal papers?

Ms. WILLIAMS. No, it did not. Neither the word "Whitewater" or "Travel Office files."

I do recall, however, that I, I think I asked Mr. Nussbaum—because the only other thing that was, I guess, quasi-personal that I knew that Vince was working on was the renovations in the White House—and I believe that I asked him specifically about that file, and he had said it was an office file and not a personal one. That's all I remember in terms of conversation.

Senator DODD. Now, when you talked to Mrs. Clinton on July 22, 1993, you called her; is that correct?

Ms. WILLIAMS. Thursday, yes.

Senator DODD. The principal reason for making that call was to determine what should be done with the files? Did I hear you correctly on that?

Ms. WILLIAMS. The principal reason was—I mean, I had determined that I was going to take the files to the residence if they weren't going to the personal lawyer. I made that determination. But, as with anything else, I wanted to know exactly where she wanted them. I mean, there certainly had been other times when I had taken things to the residence and she might say, "Well, that should go in the living room" or, "leave that in the dining room area or maybe in my study."

So I wanted to know. I also wanted to—definitely wanted to know where they were going because I know in my own house—I don't know what good it does, but for my tax forms and personal things I have a little silver tin box, and that is where I would want them to go. If I could think of one place in the residence that I would want them to go, it would be in that little tin box. So I figured these are personal papers; I'm not just going to leave them in the kitchen. Where do you want me to put them?

Senator DODD. Yeah. At any point between the evening of July 20 and this conversation on July 22, had you had any conversations with Mrs. Clinton about files at all?

Ms. WILLIAMS. No.

Senator DODD. So this is the first conversation about these files in that timeframe we're talking about?

Ms. WILLIAMS. Right.

Senator DODD. At any point in that conversation did Mrs. Clinton give you any specific instructions that went beyond what to do with the personal files? Specifically, anything regarding Whitewater, Travel Office, anything that did not fall under the context of personal files?

Ms. WILLIAMS. No, she did not.

Senator DODD. The red light is on, Mr. Chairman. I'll——

The CHAIRMAN. If you have anything further——

Senator DODD. No, I'll turn it over.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. I thank you, Mr. Chairman.

Ms. Williams, in 1979 I had a younger brother at the age of 35 die from melanoma, and I can remember years after that when I would talk about that experience, I had experiences just like you had earlier today. So I understand the grief that you feel when those conversations come back. Most of my comments today will not be focused on that, but on 2 days later.

But you know the saying, there are two sides to every story. I think that is very true with respect to two aspects of your testimony. Looking over your deposition, I was particularly interested in your actions and the actions of Susan Thomases on July 22, that is, 2 days after Mr. Foster's death.

Here is what I'm thinking. You've testified under oath in your deposition that you had no direct involvement whatsoever in any aspect of deciding what to do with the documents in Vince Foster's office. You have testified that the subject of the search and the var-

ious privilege issues was being widely discussed among White House staff on the morning of the 22nd; but you have stated very clearly that you never talked to Mr. Nussbaum, the First Lady, Susan Thomases, Steve Neuwirth or anyone else at any time that day about what to do with those documents.

Ms. WILLIAMS. Well——

Senator MACK. All right.

Ms. WILLIAMS. What I said was, and I think my deposition reflects this, that there were discussions, general discussions in the White House, and although I could not remember specifically being involved in them because I don't recall them as formal discussions, that people were discussing them. Whether Mr. Nussbaum was involved in a general discussion or Mr. Neuwirth, I do not recall specifically. I've also indicated in my deposition if someone during that time or on that morning had come up to me and said "what do you think about this," since I generally have an opinion about most things, I would not have been surprised in the least, so——

Senator MACK. Very good. In your words, it was a peripheral or irrelevant issue. You have told us that what little you did with the documents was the result of one phone call you received from Mr. Nussbaum late in the afternoon on the 22nd. According to you, Mr. Nussbaum called, asked that you come and pick up the documents in Mr. Foster's office and then asked you to deliver them to Mr. Barnett, the Clintons' personal lawyer.

You did what Mr. Nussbaum asked, which only took a short time; but then you were tired and just didn't want to wait for the courier from Mr. Barnett's firm to be cleared through security. So you decided to store the files in the residence as an afterthought.

Ms. WILLIAMS. Yes, as an afterthought, and also I wanted to—I mean, it's not as clear-cut as I didn't want to wait for the courier. There were a lot of factors involved. First of all, I was tired. We had had 2 exhausting days.

Second, what I thought would really be a short task, quite frankly, of getting them over became a long task because, as my mother might say, I dawdled, but in fact I was taking phone calls and I was distracted by those calls.

So there were a number of factors, including the fact that at that time to get into the White House complex, to clear somebody in, was not necessarily a very easy task. So it was a combination of a number of factors.

Senator MACK. Very good. I must say that your account of what happened makes very little sense, however, when you look at other people's testimony as well as phone records we obtained from the White House and Susan Thomases' law firm. I would just like to go through a few things, and at the end I will ask you to help us understand how there could be so many contradictions between your testimony, the testimony of others, and the facts established by these phone records.

Just so we have some idea of where I'm going, I think I'd like to tell you what I believe. First, I think both you and Susan Thomases had some involvement in Mr. Nussbaum's decision to prohibit Justice Department attorneys from conducting the initial review of the documents in Mr. Foster's office; and second, I think

the First Lady and Susan Thomases had some involvement in the decision to move the files from Mr. Foster's office to the residence.

Here is why I believe this. First, I would like to put up a chronology outlining the events of July 21 and 22, put them up on the screen so you can follow along with me. The chronology shows that Susan Thomases, the First Lady's good friend, called you nine times, Mr. Nussbaum once, and the Chief of Staff's Office three times between 12:15 a.m. on the night of Mr. Foster's death and 5:30 p.m. July 22, just before Mr. Foster's files were transferred to the residence.

Senator SARBANES. Mr. Chairman, could I ask whose chronology this is, just so we know?

The CHAIRMAN. The Senator makes an inquiry about the chronology, and I believe it is a chronology—I'm going to ask Senator Mack.

Senator MACK. If we've got copies, why don't we take them down. It's a chronology of phone calls on the 21st and 22nd.

Senator SARBANES. Who made the chronology is the question?

Senator MACK. We put that together based on phone records.

The CHAIRMAN. Staff put this together on the basis of the telephone logs, and if—are those logs available?

Senator MACK. Yes, they are.

The CHAIRMAN. They are available. We will make them available. What the Senator has done, obviously, is summarized them, but they are available. I think both staffs have them, and the records are there. So, in other words, you took them from the documents that have been submitted to the Committee and you have made a summary of those individual calls. Would that be correct?

Senator MACK. That's correct.

The CHAIRMAN. Proceed.

Senator SARBANES. I think that's understandable. I do think we ought to be furnished these things before they are put up on the screen so we know——

The CHAIRMAN. I agree.

Senator SARBANES. —they're a work product of the Senator, I gather.

The CHAIRMAN. They are a summary, I imagine, of the work product and of facts and material that have been submitted to the Committee.

Let me suggest, does everyone have one now? I'd like to have one. Could we get one down to Mr. Dennis?

Mr. DENNIS. That would be helpful, thank you.

Senator BOXER. Mr. Chairman, would you yield for just a quick question?

The CHAIRMAN. An inquiry, yes.

Senator BOXER. May I ask, Senator Mack, is this every single call that came into Ms. Williams' office in that almost 2-day period? Is that what this is?

The CHAIRMAN. I think the Senator is going to go through this.

Senator BOXER. I just asked him a question. Is this just the ones you picked out?

The CHAIRMAN. For purposes of clarification, I'm going to ask the Senator to indicate what this includes, so let's give him the oppor-

tunity to explain. I wish we would give back to the Senator the time that we have spent on this little exchange, so Senator Mack.

Senator MACK. Maybe it might be helpful, then, to just—maybe I should just summarize what this is. On July 21, 1993, at 12:15 a.m., Susan Thomases paged Maggie Williams. At approximately 11 to 11:15, Thomases calls Maggie Williams and left the message "on her way." At 11:06, Thomases——

Senator BOXER. Mr. Chairman, if I might, I've asked a question and the Senator isn't answering it. Are these selected calls you want us to look at, or is this the entire roster of all the calls Ms. Williams got?

The CHAIRMAN. These are selective calls——

Senator BOXER. Thank you.

The CHAIRMAN. —between Mrs. Thomases and the office of Maggie Williams.

Senator BOXER. Thank you very much.

The CHAIRMAN. Senator, let us continue. By the way, why don't we start from the beginning, and you might want to set the stage for what these are. Are these—say it in your own words as opposed to mine.

Senator MACK. Frankly, there's a very long list of phone calls here that are from Susan Thomases to Mr. Nussbaum, to Maggie Williams and to the Chief of Staff's Office. I believe nine times to Ms.—let me just take a look here. Nine times to Ms. Williams and three times to the Chief of Staff's Office. All of these phone calls are around the time—let me back up.

Several of these calls were on the 21st. The majority of these calls were on the 22nd. A number of these calls are around the time in which there was a meeting taking place in the Chief of Staff's Office with Bernie Nussbaum, that is, a discussion that was taking place about what to do with the files. What I am proposing to show here—at least to make the case that Susan Thomases was deeply involved in trying to affect the outcome of the review of documents that took place later in the day on the 22nd.

The CHAIRMAN. Now——

Senator SARBANES. Now, if the Senator would yield for a question, are you defining a call as a page message or a message slip where you leave a message to call? I take it by what you've said you're counting that as a call; is that correct?

Senator MACK. I think, again, if I could be allowed to continue, you're going to find this out as I go through it.

Senator SARBANES. OK. Fine.

The CHAIRMAN. I think, in fairness, the Senator should now—we know what he's attempting to do. Senator, would you start, then.

Senator MACK. As I indicated, the chronology shows that Susan Thomases, the First Lady's good friend, called you nine times, Mr. Nussbaum once, and the Chief of Staff's Office three times between 12:15 a.m. on the night of Mr. Foster's death and 5:30 p.m. July 22, just before Mr. Foster's files were transferred to the residence. That is a total of 13 times in just over a day and a half. On top of that, Ms. Thomases visited you in person once during that time.

Now, on July 21, Susan Thomases paged you at 12:15 a.m. She then called you at 11:06 a.m., and you spoke for almost 4 minutes. Then she called you again at 4:30 p.m. and you spoke again for al-

most 4 minutes. Finally, you testified that you spoke to the First Lady sometime during the 21st, but you say at no time did the subject of Mr. Foster's files or his office come up.

Now, I realize that contacts between you and Ms. Thomases and the First Lady were probably more in the nature of condolence calls at that point. No one disputes that.

What I have a problem with is what happened on July 22, the next day. On July 22, we know that Susan Thomases paged Bernie Nussbaum at 8:01 a.m. Sometime thereafter, he called her back, and according to what he told Steve Neuwirth, Ms. Thomases told him that she and the First Lady were concerned about "unfettered access" to Foster's office by investigators. Susan Thomases then called you and left a message at 9 a.m.

At 10:48 a.m., Thomases called the office of the President's Chief of Staff, Mr. McLarty, and talks for 7 minutes. It was then 10:55 a.m. Nine minutes later, she calls you. This is 11:04 a.m., and this time you connected and talked for 6 minutes. Now it's 11:10.

One minute later, at 11:11, Susan Thomases calls Mr. McLarty's office once again and talks for 3 minutes. That puts the time at 11:14 a.m. Two minutes after that, she called Mr. McLarty's office again. Now it's 11:16. Twenty minutes later, at 11:37, she called you again and speaks for 11 minutes. It is now 11:48 a.m. Two minutes later, at 11:50, Susan Thomases called you again and you speak for 4 minutes.

Now, I believe earlier in the questions, with respect to the counsel's asking you about contacts with Susan Thomases, you have said over and over again that you recall one meeting and no other contacts. That is the way I understood it. Would you want to clarify that?

Ms. WILLIAMS. Sure, I'd be happy to. First of all, as I look at Mrs. Thomases' record, I see that she's called 456–6266, which is the First Lady's Office, which is the general office number. Do you have—because I have not seen them; we turned over everything that I had—do you have message slips for each of these calls asking for me? Are we simply going by the Susan Thomases records? My direct number, if Susan—excuse me. Pardon me. Could I continue? Excuse me.

If Susan Thomases wanted to call me on any—and reach me, and I'm just going to look through here. I do see that she called 456–7194, which is my direct line, which is also on Evelyn Lieberman's phone and, additionally, on another phone in my office, so if she wanted to reach me, that would be the most direct way to do it.

With respect to Susan Thomases paging me in the—I guess at midnight—I remember from the message slips which we turned over to you that there is something that says that she paged me, but anyone who would have the time or the interest in Susan Thomases' calling habits would know that if you got a call from Susan, it was generally at midnight. In our office, she is known as the midnight caller because that's when she has all of her ideas, whether they are on speeches or on scheduling events.

Second, while Susan Thomases is a good friend of the First Lady, I have known Susan independently longer than I have known Hillary Clinton, almost, I guess, 13, maybe going on 14 years now. She knew how close I was to Vince and I am sure that she, knowing

Susan, was insistent about running me down until she had me on the phone.

So while I submit to you that if the call came in on 7194, which is my direct line, either I picked it up or Evelyn picked it up; I'll bite. I picked it up if it was 7194 and I was at my desk. But, unless you can show me the message pads that say 6266 and have my name on every one of them, these may just have been tries to other people in the office that she might know that she was trying to talk to—I mean, it is very possible in looking for me, Susan talked to everybody in that entire office.

While I cannot speak to how her calls to Mack McLarty or Bernie Nussbaum fit in, I would encourage you not to be so certain that there is something sinister going on here. I would encourage you. You don't believe it; you weren't there. I'm sorry you don't believe it. It would make life a lot easier if you did, but everything that happened was not some big plot.

As I look back on it, now I wish there really was, because then it would be worth being here, but this is—I mean, these calls, this list, does not suggest to me what it apparently suggests to you.

Senator MACK. Ms. Williams, let me tell you why there is the focus on this. It's because you have told us that there was no contact with Susan Thomases, other than that meeting.

Ms. WILLIAMS. That is not what I told you. I said, to my recollection, what I remember, that is what I said in my deposition and today, the only thing I remember was Susan Thomases coming to my office, and I believe that your counsel asked me that question three or four times, and each time I said what I remember.

Now, if Susan called me, if I talked to her that day—do I say it is impossible? Do I say it is unlikely, given that Susan and I speak on the phone a lot, even prior to this thing? It's possible, but I am saying that I am still not convinced that there is a plot going on here simply because you have all these calls to me from her, and also the fact that I don't even know if these calls were even directed toward me.

Senator MACK. I'll ask you again, are you saying to the Committee, then, that you don't remember any contact with——

Ms. WILLIAMS. I do not—as I said to the Committee, what I remember distinctly is seeing Susan Thomases. She came in my office. I remember that distinctly. That is what I recall.

Senator KERRY. Could I just ask a question of my friend? I know the red light——

The CHAIRMAN. You mean of the witness?

Senator KERRY. No, of——

The CHAIRMAN. No, I'm not going to permit that. I give great latitude. The red light is on. I know Senator Mack has other questions, but I will take it back to this side. The Senator can ask questions, but we're not going to be examining each other. That's inappropriate and I don't want it to deteriorate into that kind of situation. We give great breadth.

Senator KERRY. The Senator is making a presumption——

The CHAIRMAN. Let me say this to you. It is your turn. We're going to turn to Senator Sarbanes. You can recognize, Senator Sarbanes, if it is Senator Kerry's turn.

Senator MACK. Can I just finish?

The CHAIRMAN. Do you have a moment or two?

Senator MACK. I'm just going to read one question out of the deposition.

The CHAIRMAN. We'll give you that latitude.

Senator MACK. The question out of the deposition——

The CHAIRMAN. I want to give you the page.

Mr. DENNIS. We have the deposition.

The CHAIRMAN. Do you have the page?

Senator MACK. It is on pages 77 and 78. Again, the question is put during the deposition:

Question: Did she have any other conversations with you during this period of time?

Answer: No.

Then there's a qualifier:

That was the only—that really was the only time I saw her that week. I don't even remember if she went to Vince's funeral, but I do remember seeing her Wednesday or Thursday.

Again, the question was, did she have any other conversations with you during this period of time? The answer was no.

Ms. WILLIAMS. The question was in the context of, "Did she tell you why she had come down to Washington?"

Answer: No, but I mean it wouldn't be unusual for Susan to be in Washington.

Question: Did she have any conversation with you during this period of time, the period that Susan supposedly would be in Washington?

Answer: No, that was the only—that really was the only time I saw her that week. I don't even remember if she went to Vince's funeral, but I do remember seeing her Wednesday or Thursday.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Kerry.

Senator KERRY. First, let me say to the Chairman that I'm sorry that he feels that a simple inquiry of fact automatically degenerates somehow. I simply wanted to ask my friend from Florida whether the record showed that this call specifically connected to Ms. Williams.

Now, it seems to me that's a very legitimate issue. Looking at the pages here of phone records, I notice that there were a lot of calls because you have huge redacted areas of phone calls and then these few connections. But, looking at it, I only see one telephone number connection.

Let me ask you, Ms. Williams, what is your phone number, direct line?

Ms. WILLIAMS. 617——

Senator KERRY. Maybe you don't want to give that out on national TV. But, at any rate, 6266 is not your direct line; is that correct?

Ms. WILLIAMS. That's correct.

Senator KERRY. Let me just say that I only see one direct line connection. Now, obviously, if Ms. Thomases had Maggie Williams' direct line, I would assume if she was trying to get her, she would have called it a number of times.

If she was leaving messages, we don't even know if these connected to her. I don't want to spend my time on that and get lost in it, but I think we ought to be factual in what we're presenting.

It's just interesting that in these pages, most of the telephone numbers have nothing to do with this and they're all redacted.

Here is a whole page of phone numbers entirely redacted, second page, entirely redacted, so obviously there were a lot of phone calls being made, most of which have nothing to do with this.

Leaving that aside, let me ask you, if I may, Ms. Williams, you have not been asked under oath here today anything with respect to the taking-out of documents from the office, notwithstanding the polygraph test. With respect to the polygraph test, there are two of them, I think the record should accurately simply reflect that whatever the rationale, whatever the capacity to have had a test perhaps expose that there was a problem in the taking of the test, the bottom line remains that you passed both tests. Is that fair?

Ms. WILLIAMS. That's fair.

Senator KERRY. One was delivered independently by the Independent Counsel with a choice of Independent Counsel's polygraph expert; is that correct?

Ms. WILLIAMS. That's correct.

Senator KERRY. Now, I want to ask you, with respect to taking something out of Mr. Foster's office on the night of the 20th—Mr. O'Neill sat here this morning. Did you hear his testimony?

Ms. WILLIAMS. Parts of it.

Senator KERRY. You are aware that he is suggesting that he saw you carrying something; is that correct?

Ms. WILLIAMS. Yes, I am.

Senator KERRY. Let me ask you, based precisely on his testimony, did you carry out folders from Vince Foster's office on the night of the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry out something like folders on the night of the 20th from Vince Foster's office?

Ms. WILLIAMS. No, I do not recall carrying out folders.

Senator KERRY. Did you carry out a box on top of folders from Vince Foster's office on the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry out something like a small hatbox on the night of the 20th from Vince Foster's office?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry out 3 to 5 inches of files from Vince Foster's office on the night of the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry out something "like a bundle" from Mr. Foster's office on the night of the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry out a small, lightweight hatbox from Mr. Foster's office on the night of the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry out something that was of some weight on the night of the 20th from Vince Foster's office?

Ms. WILLIAMS. Other than myself, no.

Senator KERRY. Did you carry out a box from Vince Foster's office on the night of the 20th?

Ms. WILLIAMS. On the night of the 20th, no, I did not.

Senator KERRY. Did you carry out a cardboard box used for files from Vince Foster's office on the night of the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you carry anything at all out of Vince Foster's office the night of the 20th?

Ms. WILLIAMS. No, I did not.

Senator KERRY. I would like the record to reflect that every single one of those descriptions is straight out of Mr. O'Neill's deposition.

Now, Ms. Williams, there are obviously some very legitimate questions here, and I think you can understand that. While we may not be able to determine what happened as a matter of fact in the carrying-out or not because there's conflict, there is a test of common sense that we have to try to apply and I'm sure you're more than sensitive to that.

That test of common sense, frankly, raises legitimate questions on a number of different issues. I would ask you, first of all, the White House is a secure place. You, yourself, had a reservation about wanting to stay around because somebody would have to go through security to get into the White House.

It's very hard for the average person looking at this not to question why, since it is such a secure place where people can't just walk in and take things, where there is the highest security in the land to protect the President of the United States, there's a commonsense question of why it is that you could not simply have left a sealed box for Mr. Barnett to pick up on his own, or a commonsense question of why anything had to be moved from an office that could have been and was, in fact, requested to be secured by the police and was effectively secured with only legitimate people being able to enter it.

Help us, if you will, to understand that test of common sense about why these documents had to be moved somewhere.

Ms. WILLIAMS. I can't speak with respect to why they had to be distributed, since I was moving files or moving a box at the instruction of Mr. Nussbaum.

I will say certainly, in retrospect, that the idea of simply leaving the box there with Mr. Barnett's name on it should have crossed my mind, but part of what I thought I was doing, I thought I was doing something personal for Bernie Nussbaum.

I knew that the days that followed Vince's death were as difficult for him as they were for any of us, and while I didn't know necessarily what his reasons were for disbursing the files at that particular point in time, I had no reason to not trust Bernie and not trust that he had a good reason for doing so.

Senator KERRY. Let me, if I can, just follow up on that again with a test of common sense. For all of us listening to this and trying to pick it apart in a fair-minded, open way, Bernie Nussbaum requested you to deliver them to Mr. Barnett. So if you were doing something personal for Mr. Nussbaum, it's hard, again against this test of common sense, to understand why you wouldn't have guaranteed that delivery. Where is this interruption that occurs that they are delivered elsewhere?

Ms. WILLIAMS. I don't have a rational answer for it. I just know how I was feeling and I knew the one thing that I was going to

do, since Bernie had given this to me to do, was if I didn't get them to Bob Barnett, for all of the personal and perhaps selfish reasons of time and my own exhaustion, that I would do what I considered the next best thing: I would take care of the files in a way that delivered them to a place of safekeeping.

In retrospect, it—God knows, in retrospect it wasn't the best decision I've ever made in my life, but that is what happened. I understand your difficulty in terms of the commonsense test. But everyone doesn't operate all the time with common sense, and that was one of the times when I was lacking and would have loved to have done just that.

But, in my mind, my putting them in the residence for a place of safekeeping both satisfied Bernie's request that they go to a place of safekeeping and accommodated my own interest, which at that time was to leave the White House immediately.

Senator SARBANES. Mr. Chairman——

Senator KERRY. I see the light is on, but how do you reconcile this notion that the files were meant to go there? There had been no conversation with Mrs. Clinton about files, but then when you have a discussion with her that evening on the phone, you raise this issue almost as if there was knowledge of it, or that there was some direction to be given by her as to where they would go.

Why would you not lock them in the Counsel's Office? Why would you not lock them in your office? Why would that subject come up, I guess?

Ms. WILLIAMS. Why would which subject come up? I'm sorry.

Senator KERRY. As to where to put the files in the residence.

Ms. WILLIAMS. Going back once again, once I had made a decision that I was going to put the files someplace for safekeeping and I had decided that it would be the residence, then the next thing I wanted to do was to find out exactly where I should put them in the residence, which is why I called Mrs. Clinton. This would not be different from my habit of taking this box or this thing or this other thing to the residence from one of the West Wing offices and asking her where do you want me to put it.

Senator KERRY. The reason for that is that you thought that it was strictly personal to the Clintons themselves?

Ms. WILLIAMS. The reason for that was I was drawing on my own experience as someone who has personal files. I would want them in a special place, and I assumed that she would, too.

Senator KERRY. That's a fair answer, and I appreciate it. Thank you.

Senator SARBANES. Mr. Chairman, I know we have a vote. Could I clarify just one thing factually before we break because I'm concerned about it?

The CHAIRMAN. Certainly.

Senator SARBANES. The telephone number 456–6266, which appears on Susan Thomases' telephone records, is not your personal phone or your direct line. That's the line into the office; is that right?

Ms. WILLIAMS. Into the whole office.

Senator SARBANES. Into the entire office.

Ms. WILLIAMS. Right.

Senator SARBANES. Mr. Chairman, I just want to make this observation. In setting out his relevant chronology, Senator Mack, with respect to calls that were made to the general telephone office of Chief of Staff McLarty's office, said Susan Thomases called Chief of Staff McLarty's office and spoke with someone for 3 minutes. With respect to phone calls that were made to the general phone number in the Chief of Staff's Office to the First Lady, he doesn't say that, he says Thomases called Maggie Williams and spoke for 11 minutes.

Now, we don't know whether that's the case or not. There's a——

The CHAIRMAN. In other words, the Senator raises the question whether the call that came into the Chief of Staff's Office for the First Lady was taken by Maggie Williams or someone else.

Senator SARBANES. What I'm really——

Senator KERRY. Or whether she was put on hold for 4 minutes.

Senator SARBANES. What I'm really raising is when a call was made to McLarty's office on the general number, he said spoke to someone. When the call was made to the general office on this number, the assumption is made that they spoke to Maggie Williams, and that's two different assumptions.

The CHAIRMAN. I think it's fair to say that was an assumption. We are going to go down and vote. We'll come back and look into that, give the Senator an opportunity or see if that point has to be more fully developed. We're going to take a recess for 10 minutes, then we'll come back and see if we can't complete this. If we possibly can, it would be my intent to do that. We stand in recess.

[Recess.]

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. Getting back to the question of the telephone calls, I just want to make sure, Ms. Williams, that I understand that you agree that the number 456–6266 was your number in the West Wing?

Ms. WILLIAMS. No, it's not in the West Wing.

Mr. CHERTOFF. I'm sorry, where is it?

Ms. WILLIAMS. It is not. It's in room 100.

Mr. CHERTOFF. The Executive Office Building?

Ms. WILLIAMS. Yes, sir.

Mr. CHERTOFF. That is your number?

Ms. WILLIAMS. No, it was the number for the First Lady's Office. Any calls that come in for the Deputy—my Deputy, the Deputy Policy person, interns. It's the general number.

Mr. CHERTOFF. Can you be reached at that number?

Ms. WILLIAMS. I can be reached at that number sometimes.

Mr. CHERTOFF. I have a problem here, then, Mr. Chairman. I guess I have to bring it to your attention. We had asked the White House—and I see there's a representative of the White House sitting in the audience—we had asked the White House to give us a directory indicating the various individuals who were attached to various phone numbers.

I have it in my hand—and in my hand I also have the facsimile record indicating it was faxed to us on July 18, 1995, 12:12 a.m., 456–2883 as the fax sending number, indicating that the White House had provided us with an official record listing the people to whom various telephone numbers pertained, and I think it was on

that that Senator Mack relied. In looking at that document, it indicates as the people or the offices for——

The CHAIRMAN. Why don't we do this: Can we put that document—I think everyone has this document, but if we can put it up—do we have copies of this? Can we get some copies made?

Mr. CHERTOFF. I know we all have received this at a point in time. You will see that there are two names listed by the number 456–6266. First, there is a general number for the Chief of Staff to the First Lady, that's you; right?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Then we have Margaret Williams, 456–6266, and we have Evelyn Lieberman, 456–6266. Now, Ms. Lieberman, I had asked you earlier whether on July 22 you had received any calls from Susan Thomases, and your answer to that was you didn't recall any.

Ms. LIEBERMAN. That's correct.

Mr. CHERTOFF. So, by process of elimination, the only other name which the White House furnished us with in the last month has been the name that is attached to this number 456–6266.

Ms. LIEBERMAN. The fact that I said I didn't remember doesn't necessarily mean that I didn't speak to Susan. The point that I wanted to make before——

The CHAIRMAN. Let me ask you this: Do you have any specific recollection of having received phone calls during this period of time from Susan Thomases?

Ms. LIEBERMAN. No, I do not. I do not have any specific recollections of having phone calls from anybody during those days, but I would like to make just one point that I wanted to make before. Very often, if people wanted to talk to Maggie—sometimes Susan—I would speak to them. I very often would just intercept calls for Maggie if she were elsewhere, so it's very possible that some of these calls could have been taken by me.

The CHAIRMAN. But you don't recall it?

Ms. LIEBERMAN. No, I don't, no. It would not have been unusual for me to speak to Susan, so it wouldn't be anything that I would remember specifically.

The CHAIRMAN. But you do not—again, I don't mean to beat a dead horse, I think you've answered that you don't recall having any conversations with Susan Thomases?

Ms. LIEBERMAN. Yes, sir, that's correct, but it would not have been unusual for me to have spoken to her.

The CHAIRMAN. We understand that.

Mr. CHERTOFF. But let me pursue this for a moment, Ms. Lieberman. If you took a call from Susan Thomases for Ms. Williams, you would leave a message; right?

Ms. LIEBERMAN. No, not necessarily.

Mr. CHERTOFF. You would tell Ms. Williams?

Ms. LIEBERMAN. Sometimes.

Mr. CHERTOFF. So, in other words, you would orally convey the content of the call to Ms. Williams?

Ms. LIEBERMAN. Sometimes. For example, I wouldn't have told Maggie if—which was not unusual—Susan would have called during that period and said how is Maggie doing, I'm worried about

her. So I wouldn't necessarily have said to Maggie, Susan called, she's worried about you.

Mr. CHERTOFF. July 22, 1993 was the day on which you testified, Ms. Williams, that Susan Thomases showed up at your office in the Executive Office Building and discussed insurance matters with you. Remember that?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Is it your recollection, Ms. Lieberman, that there were four or five additional occasions on that day in which Susan Thomases called you to find out how Maggie Williams was doing?

Ms. LIEBERMAN. No, it is not my recollection, but we could have had phone conversations and she could have had phone conversations with other people in the office. 6266 is the general number of the First Lady's Office, which we've——

The CHAIRMAN. How many other people are there in this office?

Ms. LIEBERMAN. In this particular suite?

The CHAIRMAN. Yes.

Ms. LIEBERMAN. I'm counting down the suite. It could have been any of a number of volunteers who sit in the front and answer the phone, let's say 10.

The CHAIRMAN. Mrs. Lieberman.

Ms. LIEBERMAN. Yes, sir.

The CHAIRMAN. I have to tell you that it is difficult under these very trying circumstances, given the tragic death, to believe that Mrs. Thomases would speak for 3 minutes and 48 seconds on one call and, I think, 7 minutes, 6 minutes, and 11 minutes on others, to a volunteer.

Ms. LIEBERMAN. I agree.

The CHAIRMAN. Certainly if it was something of some urgency, and you don't recall getting one of those phone calls, there would have been some message conveyed to Maggie Williams by one of these people.

So now when we look at the——

Ms. LIEBERMAN. Mr. Chairman, may I just clarify one thing? There are 10 staff people who have access to that telephone, irrespective of the volunteers.

The CHAIRMAN. You are not suggesting that Susan Thomases spoke to these people regularly, are you?

Ms. LIEBERMAN. Oh, yes.

The CHAIRMAN. That she spoke to all of these people?

Ms. LIEBERMAN. No, no, no, but regular contact with about three or four of us, yes.

The CHAIRMAN. Yourself?

Ms. LIEBERMAN. Yes.

The CHAIRMAN. Maggie Williams?

Ms. LIEBERMAN. Yes.

The CHAIRMAN. Who else?

Ms. LIEBERMAN. Melanne Verveer, who was Ms. Clinton's Deputy Chief of Staff. Lisa Caputo——

The CHAIRMAN. Was he there on this particular occasion?

Ms. LIEBERMAN. Who, Melanne? She. I don't remember.

The CHAIRMAN. I'm just trying to help. That's why Senator Mack—I want you to know that I was not aware of these calls or this breakdown, and it is very powerful. When the White House in-

dicated that the telephone numbers requested—and that's why you see two names for 456–6266—were for Margaret Williams and you, Ms. Lieberman, the Senator became troubled because you testified, both in your depositions and today, that you have no recollection receiving any of these calls—by the way, anyone could miss a call.

I am not suggesting that you might not recall one call or maybe two, but given the frequency of these calls over that period of time, it seems to me that that is a matter of some concern.

We have testimony from others, and indeed from Maggie Williams, that indicates that at the same time as these calls there were discussions about the handling of the papers in Vince Foster's office. So this was going on. We have Ms. Thomases who calls at 12:15 and then calls again and says I'm coming down the next morning—I mean, this would appear to be a matter of some urgency. Given—no?

Ms. LIEBERMAN. Not if you——

The CHAIRMAN. You don't think she thought this was of some urgency based on the sequence of these calls, huh?

Ms. LIEBERMAN. If you would look at the pattern of phone calls or pages from any other particular period of time, you might find the same pattern. Susan calls late at night. She often comes down to Washington.

The CHAIRMAN. I'm not just speaking about the one call but, in any event, I certainly have questions. I was not aware of the frequency of these calls during this very short period of time and the sequence of the calls to your office, at the very least, and then to Bernie Nussbaum and to the Chief of Staff, all while this whole subject matter of the papers was being discussed—and given Ms. Thomases work and advice, I believe there's been testimony that she had worked on the Whitewater matter, certainly during the campaign and even at some later time.

So, that's why it raises some questions, but the little red light has gone on. I'm going to—Senator Sarbanes.

Senator SARBANES. Thank you very much.

Senator KERRY. I think she started to answer a couple of times and got cut off.

The CHAIRMAN. Ms. Lieberman, if you wanted to reply, please go ahead.

Ms. LIEBERMAN. I think the point that I was trying to make—thank you—is that Susan called very frequently. She often calls late at night. That's when she has—as Maggie said, that's when she has ideas and that's when she has time. I'm sorry I don't have some home phone tapes where you can hear late night messages from her.

But the other point that I would like to make with reference to why I didn't specifically recall, and still do not, having spoken to Susan that day, is although Vince's death was obviously a horrific thing, I was not friends with him, I did not know him well, I hardly knew him at all. His relationship was with Maggie. My concern was with Maggie's well-being and how Maggie was doing, so the events of the next 2 days would not have had the same significance for me as they would for other people who were directly involved with Vince.

So I guess the main point that I would like to make is that it would not be unusual for Susan to call a number of times and to talk to me for a couple of minutes about how is Maggie doing, is she going to the funeral, what's going on. So that's why it's not unusual for me and that's why I wouldn't remember having spoken specifically to Susan.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Could we have that table that Mr. Chertoff was using just before we changed over? And while it's being——

The CHAIRMAN. You mean up on the——

Senator SARBANES. Up on the screen. While it's being put up, Ms. Lieberman, is it fair to say that Susan Thomases calls all the time?

Ms. LIEBERMAN. Yes, sir.

Senator SARBANES. Now, I just want to point out one thing here because I think it's an interesting line of questioning. I am concerned about the double treatment in the relevant contacts chronology that was laid before us earlier, then Mr. Chertoff sought to explain it away by going to these numbers that were given there for Ms. Williams, as I understand it.

Exactly the same numbers are given for Mr. McLarty. Not the same telephone number, but the same identical numbers up where you see McLarty. On McLarty, where you have 456–6797 and 456–6797, which is the general number into that office, as I understand. It's like 456–6266——

Ms. LIEBERMAN. That's correct.

Senator SARBANES. —is the general number into Margaret Williams' office. Now, with respect to the McLarty calls, the chronology says "Thomases called Chief of Staff McLarty's office, spoke with someone for 7 minutes [Susan Thomases' phone records]."

When calls are made to the Chief of Staff of the First Lady, we don't say that they called the Chief of Staff's Office and spoke to someone for a certain number of minutes. We say Thomases called Maggie Williams. Now, she may or may not have spoken to Maggie Williams, I don't know. Maggie Williams says she doesn't recollect, but my concern is the divergent treatment in the relevant contacts chronology of these phone calls.

The CHAIRMAN. If the Senator wants a response——

Senator SARBANES. Sure, I'd like to straighten it out.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. First of all, I don't want to put myself into Senator Mack's mind because I didn't prepare this. I think the point I was trying to make was simply this: In the current state of the record, I cannot tell you whether the call to the three people listed in the Chief of Staff's Office went to any one of those three. What we do have on the current state of the record is testimony by Ms. Lieberman that she did not recall any calls that day from——

Ms. LIEBERMAN. I explained why, Mr. Chertoff.

Mr. CHERTOFF. I understand that. I'm just trying to address the issue of disparate treatment. What we do have here is testimony a little earlier when I was originally asking questions in which Ms. Lieberman indicated she didn't recall getting any calls from Susan Thomases. Using the process of elimination, that simply leaves one name. I think that—I can't speak for Senator Mack. For myself, I would be delighted——

Ms. LIEBERMAN. Mr. Chertoff, may I respond to you?

Mr. CHERTOFF. Excuse me. I would be delighted if we could, in the course of the hearings, pare down the list of names under Chief of Staff to President——

Senator SARBANES. I think it leaves——

The CHAIRMAN. I am willing to bring in all of the other people who may have been working on those days and, if we're going to persist in this, I'm going to ask that we bring them all in and take depositions to ascertain how many of them spoke, if any, to Susan Thomases. That would resolve it.

Senator SARBANES. Are you going to bring all of McLarty's people in?

The CHAIRMAN. No, because Senator Mack did not indicate that a call went to McLarty. He said to the Chief of Staff's Office. I think we've explained that the White House provided to us in good faith the two names, and by process of elimination, one person indicated that she did not recall receiving any of the dozen or so calls, that a reasonable person would be troubled that none of these phone calls during this short period of time would be remembered, particularly calls from Susan Thomases. Susan Thomases is not just anybody. She doesn't call on a whim, she calls on important matters. She's a thoughtful, powerful person, a good friend of the First Lady, influential——

Senator SARBANES. Let me now recapture my time and ask Ms. Lieberman——

The CHAIRMAN. If I might, I'll start the time right from the beginning for the Senator and you have a right to reclaim all of it. But I've attempted to give you a response.

If necessary, I think our counsels can work it out if the Committee wants to and, if we can't stipulate, to bringing in the other people who work there and deposing them on whether they received phone calls from Susan Thomases during this period of time. So I'll leave that for the Committee staff to consider next week.

Senator SARBANES. Mr. Chairman, let me just make this observation: The only name listed for the 6797 is Mack McLarty. On the chronology for McLarty——

The CHAIRMAN. There's Mr. Burton's name, Mr. Neel's name——

Senator SARBANES. The others had Ms. Williams and Ms. Lieberman. Now, up there when they made a call, they didn't assume it went to McLarty. That's the only point I'm making.

The CHAIRMAN. I understand.

Senator SARBANES. Ms. Lieberman, would you respond to the observation about Susan Thomases' phone calls that the Chairman was making?

Ms. LIEBERMAN. Yes, sir. With all due respect to Susan's importance, and I like her very much, and no, she may not call on whim, but her calls are not infrequent and receiving a call from her and speaking to her would not necessarily be a noteworthy or memorable event.

Senator SARBANES. Thank you very much.

Senator Kerry.

Senator KERRY. I just thought the record ought to also reflect, I believe—because we stand corrected now as to the other telephone numbers and their generality, I think it would be helpful if the

Chairman simply said that nobody ought to draw any conclusions yet from this chronology.

The CHAIRMAN. No, the Senator is absolutely correct. We should not, but I think that is what Senator Mack was raising, and I think——

Senator KERRY. It's a legitimate question.

The CHAIRMAN. Sure, yes.

Senator KERRY. But I think the Senator did more than—he, in fact, read——

The CHAIRMAN. I don't draw any conclusions——

Senator KERRY. He had a script and, in fact, it was interesting because he was reading about how he found her explanation inconsistent and he was reading from the script how he found it inconsistent when he hadn't even heard her answer yet, but nevertheless he read the prescripted inconsistency.

So I think there was this purposeful effort to try to leave an impression of precisely the impression we have been discussing, so I think we ought to agree until we know where the phone calls went and who they went to, that it's inappropriate.

The CHAIRMAN. Again, I am willing to—and I do not want to replow this over and over, but given the information that the White House provided us with two names, one telephone number, it was reasonable with one of the people saying they do not have any recollection to raise the question whether or not these 11 phone calls or 10 phone calls did go to the Chief of Staff of the First Lady. I think that's very reasonable.

Now, I don't know if we want to examine—and, again, I think it's very reasonable to assume that some of these calls may not have connected, but when you do get calls that go on for a period of time, it's reasonable to assume that a connection and a conversation—I mean, Ms. Thomases is not a person who is inconsequential. We're not talking about some person who just makes phone calls in——

Senator KERRY. Let me say to the Senator that I completely agree with him——

Senator SARBANES. She happens to be a New York neighbor of Senator D'Amato.

The CHAIRMAN. I have to say that.

Senator SARBANES. There are no inconsequential New Yorkers, that's for sure.

Senator KERRY. I just wanted to say that, in fairness, I'm not trying to leave the impression either that there weren't connections, that there weren't conversations or that Susan Thomases obviously isn't a player and somebody important, but I just felt that Senator Mack was drawing conclusions that reached beyond what's appropriate.

The CHAIRMAN. Senator Mack.

Senator MACK. I'll just make one additional comment and hope that this won't go on much longer. One of the calls that I referred to was on July 22, 1993, that was Susan Thomases' call, a page to Bernie Nussbaum. Bernie Nussbaum returned that call sometime thereafter. He called her back; and according to what he told Steve Neuwirth, Ms. Thomases told him that she and the First Lady were concerned about unfettered access to Foster's office by inves-

tigators. All I'm saying is I think that lays the basis for saying that these were more than just casual phone calls that were coming in as Susan Thomases normally does. I'm just saying with that as background, I think there are serious questions about these phone calls.

The CHAIRMAN. Let me ask you, because I do have other Senators who have indicated that they want to continue and the hour is at 5:45. I don't know if we can get them here at this time. That's the problem. Let me say this to you: If we were to attempt to limit further questioning to an hour, could you be available tomorrow?

Ms. WILLIAMS. Mr. Chairman.

The CHAIRMAN. Yes.

Ms. WILLIAMS. With all due respect, I would like to go home and get a good night's sleep tonight. I'm happy—what can I say, I'm not coming back? I'll be back tomorrow if you say I've got to be back tomorrow, but my preference is to stay and try to get through this. I would love to try to get through it.

The CHAIRMAN. Let me do this——

Ms. WILLIAMS. I would also like to go to work.

The CHAIRMAN. I'm going to recess and I'm going to have counsel review this matter to see if we can avoid bringing you back tomorrow. I have to check because there are a number—we are——

Senator KERRY. Mr. Chairman, can I say that we were originally going to go until 1 p.m. and do a panel a day, then we agreed to change, and I think that's a good idea, I agree with the Chairman completely in trying to move through this. But it's only 5:45. We're going to be here in the Senate for the next several hours.

I think it's only fair to complete our task. The witness is here and ready. I think it's very unfair to drag this on and out, with the exception of something that you might need to check with counsel in order to get further elucidation, but the fact that a Senator doesn't want to be here now to question is inappropriate to prolong this, and I think we ought to——

The CHAIRMAN. I'm going to suggest that we recess and try to resolve this without bringing Ms. Williams back. If I had my choice, unless there are Senators who still feel that there are very important issues——

Senator KERRY. Mr. Chairman, I think, again, we should limit that. Senators may come back here. For whatever reason they're not here today——

The CHAIRMAN. Let me say this to you——

Senator KERRY. I think it should be limited to the area of——

The CHAIRMAN. We'll continue and see how much we can get done at this point in time, all right?

Ms. LIEBERMAN. Thank you, Senator.

The CHAIRMAN. I want to resolve this. If we can complete it, I would like to do that.

Senator SARBANES. Mr. Chairman, could staff contact the absent Senators and tell them we're trying to conclude this matter and that if they have questions, they ought to come? We're still in session, we're voting, so they——

The CHAIRMAN. Senator Bond, are you ready?

Senator BOND. I'm ready if you are—if you're not going over to that side.

The CHAIRMAN. Yeah.

Senator BOND. First, I would ask if my colleague from Florida is finished with his questions?

Senator MACK. You go ahead. I've got others and I'll go into them later.

Senator BOND. Ms. Williams, I want to move back to the night of the 20th, just the comings and goings, because we do have a number of conflicts. We understand it was a very emotional night, and I just want to find out who was where. I just want to know the movements.

First, there's some uncertainty about who was in the office first. You may have heard Secret Service Officer O'Neill testify that he opened the office at 10:42 and that Patsy Thomasson came in with Bernie Nussbaum, then you testified that Patsy Thomasson was there, so on the basis of your testimony and Ms. Thomasson's and O'Neill's, we have that straight. Mr. Nussbaum had the story confused on that one. The majority view seems to be that Ms. Thomasson was there when you arrived.

The second area of confusion was who was left alone in Mr. Foster's office. Secret Service Officer O'Neill said Ms. Thomasson was sitting alone at the desk. You also said that Ms. Thomasson was alone in Foster's office; is that correct?

Ms. WILLIAMS. That's correct.

Senator BOND. Again, Mr. Nussbaum said that you and Ms. Thomasson were already there when he got there, but it appears that your accounts were on track so far.

The area of greatest confusion is who was last to leave the office and who locked up. Mr. Nussbaum testifies that you all left Mr. Foster's office together. Ms. Thomasson testifies that you left and then she and Mr. Nussbaum left, and you testified that you and Bernie Nussbaum left Ms. Thomasson sitting at the desk. Is that your testimony, that you left Ms. Thomasson sitting at the desk?

Ms. WILLIAMS. My testimony was that Ms. Thomasson was sitting at the desk. My testimony was that I was not clear if Bernie Nussbaum left before me or after me, but the best of my recollection is seeing us both in the stairwell with Bernie, it seemed, ahead of me. I remember looking at his bald spot.

Senator BOND. That is noticeable, I agree with you.

Ms. WILLIAMS. I remember that, so as close as I can get it is he left first and me shortly after with him in front of me.

Senator BOND. Now, you had gone to the White House to pick up the press schedule. That was the first thing in terms of your action that night, you went to see what the—I mean, the daily schedule, the schedule for the next day; is that correct?

Ms. WILLIAMS. No, I had been less purposeful than that. I had gone to the White House. When I got to the White House, I did try to give myself something to do. I was there—when Mrs. Clinton's father had died earlier in April of that year, she had called me to inform me of her father's death and I had returned to the White House, not with much of a mission, but wanting to be available and when I got there, there was something for me to do. So I didn't go with a mission, but the schedule, as well as looking at the press statement, were both things that occurred to me should happen since I was there.

Senator BOND. The schedule, you say in your deposition, was slipped under the door?

Ms. WILLIAMS. The schedules at that point were not being faxed, and generally what would happen is that the schedule would be slipped under the door in an envelope.

Senator BOND. It's just a one- or two-page thing slipped under the door. I think those were the good old days before we had faxes. Schedules were a lot more to the point then, when you didn't have faxes, but they just slipped it under the door?

Ms. WILLIAMS. Slipped it under the door.

Senator BOND. That's what you had, that's what you were carrying around that night?

Ms. WILLIAMS. I don't know at what point I was carrying it, but I do know that as I was going to my office I was thinking that—in order to look for the schedule—it would be there. So I really can't tell you how long I was carrying it, if and when, but that's something that sticks out in my mind.

Senator BOND. All right. But it's certainly not something that you would have to take two hands to carry?

Ms. WILLIAMS. No, sir.

Senator BOND. Now, you worked directly for Mrs. Clinton, the First Lady, as Chief of Staff?

Ms. WILLIAMS. Yes, sir.

Senator BOND. Not for Mr. Nussbaum. I'm having a little trouble just with some—with the common sense, as one of my colleagues on the other side expressed it. Mr. Nussbaum is the Counsel. He wants to take care of some records in the office of his deceased Deputy Counsel. He wants to gather them up. He calls the First Lady's Chief of Staff and asks her to do it rather than getting somebody in his office to do that? Maybe you can clarify that for me.

Ms. WILLIAMS. I will certainly be speculating since Mr. Nussbaum made the call. I can tell you what I was thinking when I responded to the call. I consider Bernie Nussbaum a friend and a colleague, and it struck me, quite frankly, that if Bernie wanted me to do something, that this was a responsibility that I could take care of for him. I wanted to do it—he could have suggested almost anything and I would have done it that day.

Senator BOND. But he wasn't in the habit of giving you orders, was he?

Ms. WILLIAMS. I didn't consider it an order. I considered it him asking me if I would get the personal files over to the personal lawyer.

Senator BOND. I know Mr. Nussbaum has been characterized as an aggressive New York lawyer, but I can't—I have trouble seeing even an aggressive New York lawyer calling up the First Lady's Chief of Staff to help clean out the Office of the Deputy Counsel, and then I——

Ms. WILLIAMS. Senator Bond, I think that—as I said, I will not speculate as to why it is that Bernie called me, but I will tell you, I wasn't struck dumb by someone saying during this time—I guess I didn't see it as a big distribution of files as much as I thought of it as we've got to get back on track, we've got to start work, do

this for me. That's how I read it. Maybe I was incorrect. That's how I read it. Blame it on the Midwest.

Senator BOND. Back on the west bank of the Mississippi, I'd have to say that dog doesn't hunt, but that's—I mean, it doesn't square with the way you would expect things normally to happen. Let me just——

Ms. WILLIAMS. The way you would expect things to happen?

Senator BOND. That the Counsel has to take care of a problem in the office of his Deputy Counsel, so he calls the First Lady's Chief of Staff?

Ms. WILLIAMS. He called Maggie Williams. Bernie Nussbaum called Maggie Williams, his friend, Vince's friend, his colleague. That's who he called.

Senator BOND. One more problem I've got, and maybe you can help me solve this, you gathered all the materials together. This was when he told you to gather them together?

Ms. WILLIAMS. No, he did not tell me to gather materials together.

Senator BOND. But you were asked to get the materials to the counsel?

Ms. WILLIAMS. The personal lawyer, that's correct.

Senator BOND. Now, by the time you finished with that task, you were tired and did not want to wait for the courier from the law firm?

Ms. WILLIAMS. No. As I said before, there were a number of things. It was not simply that I didn't want to wait for the courier. I had also been interrupted a number of times by phone calls back and forth. The day was getting later and growing longer for me. I decided at some point that I was not going to stay later to wait for a courier to be cleared in to pick up the boxes, so it was a number of factors.

Senator BOND. OK. The thing that troubles me and the thing that I have trouble understanding, this was an office, we've heard testimony by the Uniformed Secret Service officer that is locked and monitored by the Secret Service. You had—it took some time—there were interruptions to get the materials together.

Now, if you did not want to wait for a courier that evening, there are three things I would say could be done. Number one, you could have taken them around the corner to your office, which is very nearby. That would have involved moving them, it would have taken them out of a secure area, or number two, you could leave them in the office which had been and was to be secured, which is the least effort and the least time-consuming, or you could summon an intern or a courier within the White House, call Mrs. Clinton, find out where to put them in the residence, make arrangements to cart them all the way up to the residence, which is obviously much farther away than your office, and it's far more difficult than leaving them in the office which was secured and monitored by the Secret Service.

Now, I have some commonsense problems with why you chose the most difficult and least secure method of handling those.

Ms. WILLIAMS. Senator Bond, as I said in my response to Senator Kerry, perhaps I could have selected your option A or your option B. I selected option C. I think that my reasoning, though perhaps

faulty in retrospect, was, at the time that—I was looking for both a way to accommodate Bernie Nussbaum's asking me to take the files, the personal files, and put them away, and to accommodate my wanting to leave there.

So I thought if I cannot get them to the personal lawyer, files that were headed to the personal lawyer that did not get there because of my own selfish reasons, that if they weren't going there, I thought where else could I put them that would safeguard them, perhaps give Bernie peace of mind, gave me peace of mind and I thought they're personal files, I'll put them in the residence.

Senator BOND. Thank you, Mrs. Williams. Some of us draw different conclusions from that.

Ms. WILLIAMS. Sure.

Senator BOND. Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, do you have any questions?

Senator SARBANES. Mr. Chairman, I think we'll yield to Senator Moseley-Braun. I think she has a couple of questions.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. First, to Ms. Lieberman, I want to establish a few, what seem to be outstanding facts in all of this. On the night of the 20th, number one, you were not wearing a dress?

Ms. LIEBERMAN. Me?

Senator MOSELEY-BRAUN. Yes, on the night of the 20th?

Ms. LIEBERMAN. No, I was not wearing a dress. That I can say with certainty, especially if I was home.

Senator MOSELEY-BRAUN. Number two, you did not introduce Ms. Williams to Officer O'Neill?

Ms. LIEBERMAN. No, I don't think I did.

Senator MOSELEY-BRAUN. You did not see Ms. Williams carrying files or file folders or boxes?

Ms. LIEBERMAN. That's correct.

Senator MOSELEY-BRAUN. You took her home; you left again?

Ms. LIEBERMAN. Yes.

Senator MOSELEY-BRAUN. I wanted to establish those things. With all of this conversation about what happened that evening, it's possible things can get lost in the shuffle and I wanted to clarify that with you.

Now, Ms. Williams, you testified that you easily make friends.

Ms. WILLIAMS. Close, I said.

Senator MOSELEY-BRAUN. I, for one, can testify to the truth of that because you've been nice to me ever since I've met you and I feel like we got to be friends right away, particularly, Mr. Chairman, after I met Ms. Williams' mother, who told me how she was praying on the situation, and I believed her when she said that.

So I just wanted to ask you, Ms. Williams, how many hours have you spent with this whole thing? How many hours have you spent in questioning? Can you give us just an estimate?

Ms. WILLIAMS. I cannot tell you how many hours, all in these depositions, Grand Juries, investigations, private consults with my lawyer, trying to stay awake and figure out all this, which is why I wanted to get through it tonight. It's been too long.

Senator MOSELEY-BRAUN. How much money have you had to spend on this?

Ms. WILLIAMS. I have bills upward of $140,000.

Senator MOSELEY-BRAUN. As long as you're in the Government, you can't raise money to pay those bills off because you're prohibited?

Ms. WILLIAMS. No, not right now.

Senator MOSELEY-BRAUN. So this has been really hard on you, and I didn't mean to reduce you back to this point. I know that you've really been through the mill with this. But just as a final point—and I know it's a point that you've made time and time again, but I think it's important to nail these things down for the record.

With regard to this situation, it's your belief, your firm belief, that you did nothing wrong? That's one question. The second question is that you took part in nothing, in no conspiracy with regard to any part of anything having to do with Vince Foster's death or the contents of his office?

Ms. WILLIAMS. I did nothing wrong.

Senator MOSELEY-BRAUN. Thank you. I have no further questions.

The CHAIRMAN. Thank you, Senator.

Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman, and I also have just a few questions and I'd like to ask them very quickly. Mrs. Williams, there are a lot of contradictions in the testimony among the people who were in the office and it's in stark contrast to what Mr. O'Neill testified as far as who was in the office and who wasn't. I would just like to ask you how you can reconcile some of these issues because they do leave a lot of doubt in our minds as to who was there and when.

What time did you arrive? You said you came into the White House Counsel's suite with Mr. Nussbaum; is that correct?

Ms. WILLIAMS. No.

Senator GRAMS. I've been in and out of the hearing all day, so I apologize.

Ms. WILLIAMS. No, that's OK. No, what I said was I went into Vince Foster's office. Patsy Thomasson was there, and Mr. Nussbaum arrived shortly afterwards.

Senator GRAMS. As you know, Mr. O'Neill said he thought when Mr. Nussbaum arrived, shortly after he opened the suite, that two other figures came through. So, basically, all arriving about the same time. But you say you were already there when Mr. Nussbaum arrived?

Ms. WILLIAMS. That's what I recall.

Senator GRAMS. How long were you in the office, then? You were there ahead of Mr. Nussbaum, and you must have come in shortly after the office was open because, again, Mr. O'Neill's testimony says within a few minutes after he opened the office, Mr. Nussbaum walked by him. You're saying you were already there. So how long do you estimate that you spent in Vince Foster's office that night?

Ms. WILLIAMS. I really don't know in terms of minutes. I only think about it in terms of it being a brief time. I really don't know.

Senator GRAMS. You claim that you and Bernie Nussbaum then left together and Patsy Thomasson remained behind?

Ms. WILLIAMS. Patsy Thomasson was still there, as I recall. I believe, as I said to Senator Bond and Senator Mack, that my recollection was that Mr. Nussbaum left first and then I left shortly after that.

Senator GRAMS. Mrs. Lieberman, do you remember talking at all with Officer O'Neill that night?

Ms. LIEBERMAN. No, sir, I don't.

Senator GRAMS. He remembers at least two distinct conversations; in fact, riding in the elevator with you he remembers coming back up and he said I recognized her again because I talked to her 5 minutes before. Why would he have any reason to tell a story different than what you're telling?

Ms. LIEBERMAN. I said I don't recall talking to him. What I did say is it was possible he was the person who came up and opened Mrs. Clinton's suite and, under those circumstances, I would have spoken to him.

Senator GRAMS. He said he remembers you standing in the doorway talking to someone back in the White House Counsel's suite, he talked to you and, in fact, you introduced Maggie Williams to him as Hillary Clinton's Chief of Staff.

Senator SARBANES. No, no, that's not what he said.

Ms. LIEBERMAN. I don't recall being in the Counsel's suite.

Senator KERRY. I think, Mr. Chairman——

Senator SARBANES. He said she was Hillary Clinton's Secretary.

Senator KERRY. Secretary.

The CHAIRMAN. Yes, I think there was some confusion. At one point he said Secretary, but he said he might not be sure because there was a confusing point when I asked him, were you confused as to the title? Could it have been Chief of Staff, Assistant or Secretary? He said yes, but in the deposition he says Secretary. But I think he then indicated after when that question was raised that it could have been any one of the three, and there was still some confusion.

Continue, Senator.

Ms. LIEBERMAN. I know what he said. I can't understand—I don't remember under what circumstances I might have introduced Officer O'Neill to Maggie, and I certainly wouldn't have said that she was Mrs. Clinton's Secretary. I understand that there is confusion in his recollection, but I don't understand the circumstances under which I would have done that.

Senator GRAMS. Just one final question, Ms. Williams. Again, the question has been asked over and over, did you take anything from Vince Foster's office?

Ms. WILLIAMS. No, sir.

Senator GRAMS. Did you take anything from the White House Counsel's suite that evening?

Ms. WILLIAMS. No, sir.

Senator GRAMS. You did not walk by Officer O'Neill to your office, go into your office with something in your hands and then come back out? In other words, you're saying that that never happened, you never left the White House Counsel's suite, never went to your office before leaving the second floor——

Ms. WILLIAMS. I think you need to go back and maybe we should have the stenographer read the question because I think there are two things going on here.

Senator GRAMS. He's saying these are the last things that happened at 11:42 when he reached in and reset the alarm and locked the office. This was the last thing he said that happened.

Ms. WILLIAMS. Can I have the stenographer—because I'm not catching the question specifically because I think you're asking two questions. One question I could be absolutely sure of, if the question is did I take anything out of the White House Counsel's suite; I did not.

Did I take anything—excuse me, sir. Did I take anything out of Vince Foster's office proper? The answer is I did not. Now, if the other part of your question goes to whether or not there could have been a time when Officer O'Neill saw me with something in my hand going into my office, as I've indicated already, I know that night pretty much with some certainty that I had two things in my hand in that period.

I had the statement and maybe copies of the statement and, at one point, I had the schedule which did come from under my office door. I mean, I'd have to open the office to pull out the schedule. That's so, but those two things did not come from the White House Counsel's suite or Vince Foster's office.

Senator GRAMS. So you did not leave the office or the White House Counsel's suite——

Ms. WILLIAMS. I did not leave the White House Counsel's suite.

Senator GRAMS. —and walk to your office and leave?

Ms. WILLIAMS. As I said in my deposition and also in my statement, I'm not clear about the sequence in which things happened that evening. I'm not clear when I went to my office for the schedule. I don't know the point that I went into Vince's office, if it was before or after. I know that these things happened. I do not remember the sequence.

Senator GRAMS. I don't have any other questions.

The CHAIRMAN. Mr. Chertoff——

Senator SARBANES. You still have some time.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Back to the 22nd—and let me say first, Ms. Williams, I understand the hour is late. I understand you want to finish, you want to continue to go forward, but I also know from experience witnesses get tired, and I certainly don't want to have a situation in which any questions I ask, you feel you're not able to think about because you're getting tired. If you want to take a break or something, please let us know. OK?

Ms. WILLIAMS. I appreciate that. Thank you.

Mr. CHERTOFF. Now, we have had some testimony, some indication in the past that one of the main concerns that Mr. Nussbaum had in terms of allowing the police and the FBI into Mr. Foster's office was a concern about attorney-client privilege, and particularly the personal attorney-client privilege the Clintons might have for their personal documents.

If I'm not mistaken, you testified you yourself were aware of conversations on the 22nd about whether letting the agents in to look

at documents would somehow break the attorney-client privilege the Clintons might have in the documents.

Ms. WILLIAMS. Can I go back to that for a second because I'm not—not being a lawyer, I'm not clear whether or not attorney-client privilege in terms of personal matters is the same as executive privilege having to do with public matters.

Mr. CHERTOFF. That's a very good question, and I think it's one we've asked and we're probably going to ask later. There may be a difference.

Ms. WILLIAMS. Because in my deposition and also in our earlier discussion about this, the thing that I knew about, that I heard about was executive privilege.

Mr. CHERTOFF. That's an important point. I can tell you that there has been testimony in the depositions suggesting attorney-client privilege was also a concern, and particularly with respect to the personal documents that the Clintons had. When Mr. Nussbaum brought you in and asked you to eyeball the suite for documents, did he suggest to you that he had any concern that your looking at documents that were attorney-client documents involving the Clintons' personal files might somehow be a breach of the attorney-client privilege?

Ms. WILLIAMS. No, he didn't.

Mr. CHERTOFF. So he didn't have any concern that he expressed to you that letting you look at documents that were personal documents of the Clintons might in some sense be a waiver of the attorney-client privilege?

Ms. WILLIAMS. No, he did not express that to me.

Mr. CHERTOFF. Now, also, did I understand you to say when you had Mr. Castleton with you and you went with him up to the residence, you made a stop at the First Lady's Office?

Ms. WILLIAMS. I think I did, yes.

Mr. CHERTOFF. That was to get some dresses?

Ms. WILLIAMS. I think I did, yes.

Mr. CHERTOFF. What prompted you to do that?

Ms. WILLIAMS. Oh, it could have been when I passed by her office or took a call in the office that her assistant, Pam, might have said to me, could you take some stuff over to the residence, where are you headed, which was not in the—at that time where things were supposed to go was not necessarily clear. So, from time to time, I would be asked well, can you take this back to room 100; are you going to go over to the residence any time soon; can you drop this off, so it was probably something like that. I don't have an exact recollection of that, but it happened so frequently that I'm sure that that's probably what happened.

Mr. CHERTOFF. But you had just left the White House Counsel's Office with Mr. Castleton, who was carrying a box; right?

Ms. WILLIAMS. Just left? In the context of just——

Mr. CHERTOFF. I want to set the stage, if I can have a moment to do that. Your testimony was that you and Mr. Castleton left the White House Counsel's Office with Mr. Castleton carrying the personal documents collected from Vincent Foster's office; right?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. You said you then stopped at the First Lady's Office to pick up some dresses?

Ms. WILLIAMS. I think I did, yes. I believe I had to stop to get them.

Mr. CHERTOFF. You're not telling us that you just happened to walk by the First Lady's Office on the way to the residence and someone said here are some dresses, take them up?

Ms. WILLIAMS. No, but as I indicated earlier, I had been back and forth out of Vincent Foster's office going to my office to take calls or, as my deposition says, stopping in right next door to take calls because Pam also picks up on my office line there.

In the course of that—and this is totally reconstructed because I don't know, so I'm trying to give you a sense of my habit so you could see what would be possible—but if I had stopped and taken a call, if I had done this or that, Pam would know that at some point during the day I might be going to the residence. If it was—she just asked me, if you're going to the residence, would you take it, probably.

Mr. CHERTOFF. So in this whole period of time, you were in Mr. Foster's office. You've decided not to have the Williams & Connolly people send over a courier to pick up the documents. You decide instead to take them up to the residence. You recall that at some point there was a request to take dresses up, and you make a stop to go in to pick the dresses up; is that correct?

Ms. WILLIAMS. That's the best I can reconstruct it.

Mr. CHERTOFF. Thank you. I'm out of time.

Senator SARBANES. Mr. Chairman, I'm going to yield to Richard Ben-Veniste for a couple of questions. I note that Senator Faircloth is here, and I understand you were waiting for him to have his turn. We'll not use anywhere near the time, just get in a couple of questions and we'll flip it back over so Senator Faircloth can go ahead with his turn, and hopefully, we'll be moving this thing toward a conclusion.

Mr. BEN-VENISTE. Thank you, Senator. I just wanted to clarify the actual testimony, since we've had all these different versions of it from Mr. O'Neill, and then get your comment on it. This is at page 172. The question was:

Question: You testified earlier that when Maggie Williams came out of the White House Counsel's Office suite, Ms. Lieberman introduced Ms. Williams to you?
Answer: Yes.
Question: Can you tell us exactly how that happened? What exactly happened?
Answer: She walked out with her arms down in front of her with the files and everything like that. The lady that was standing by the door opened her mouth and said that's Maggie Williams, the First Lady's Secretary.
Question: She said all that, that's Maggie Williams, the First Lady's Secretary?
Answer: Right.

Now, Ms. Lieberman, do you recall any such interchange?

Ms. LIEBERMAN. No, sir.

Mr. BEN-VENISTE. Ms. Williams?

Ms. WILLIAMS. No. No, I do not.

Mr. BEN-VENISTE. Now, with respect to the question of seeking the Uniformed Secret Service officer's assistance that evening, I believe you have testified, Ms. Lieberman, that you sought the assistance of the Uniformed Secret Service initially to get into the First Lady's Office?

Ms. LIEBERMAN. That's correct.

Mr. BEN-VENISTE. Is that correct?

Ms. LIEBERMAN. Yes.

Mr. BEN-VENISTE. So you did not have a key?

Ms. LIEBERMAN. That's correct.

Mr. BEN-VENISTE. Someone from the Uniformed Secret Service, upon your request, came up and unlocked the door to the First Lady's suite?

Ms. LIEBERMAN. Correct.

Mr. BEN-VENISTE. Now, what happened when you left that evening? How, if at all, did you arrange for the door to be locked?

Ms. LIEBERMAN. I don't remember. I may have called and said to the operator please connect me with the Secret Service; we're leaving, or I may have seen an officer. I think I called. I don't remember.

Mr. BEN-VENISTE. Whether it was by telephone or in person, you made a request of the Uniformed Secret Service Division to send someone to come up and lock the door to the First Lady's suite?

Ms. LIEBERMAN. That's correct.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Ms. Williams, I think we have two more Senators who want to pose some questions, and I want to get through this, so we'll see if we can do it. We have a vote, I think at 6:30, so if we're lucky, we will be able to do that.

I just want to tell you we do recognize the trauma that you've been through, this whole situation, having to testify, not only today but all the things that you've been through, so we're going to attempt to do that to the best of our ability.

Ms. WILLIAMS. Thank you.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Williams, you testified that you received what—I'm not trying to get into the details. We have ground this pretty close to fine or minutia. I want to get the overall picture of what happened here and how you're telling that it happened and what I think happened. You're telling that you received a phone call from Hillary Clinton sometime before 9:30 when she was airborne on her way to Arkansas on July 20, 1993?

Ms. WILLIAMS. That's correct. I don't know the time exactly.

Senator FAIRCLOTH. But before 9:30 you received a call from her on the airplane?

Ms. WILLIAMS. Yes.

Senator FAIRCLOTH. You said the call was brief and that she would call you back in a few minutes when she was on the ground?

Ms. WILLIAMS. Yes, sir.

Senator FAIRCLOTH. Now, of course, we know that an airborne telephone call could be intercepted, so the logical reason for calling you back when she got on the ground would be so the call could not be intercepted or monitored. Is that not right?

Ms. WILLIAMS. That is a reason.

Senator FAIRCLOTH. That's what?

Ms. WILLIAMS. It is a reason.

Senator FAIRCLOTH. Yeah, that's the reason. Now, you say she called you back at home, sometime after 9:30 she called you at your house; is that right?

Ms. WILLIAMS. I don't know the time, but yes, I was called at home through Signal.

Senator FAIRCLOTH. About what time, 10:00?

Ms. WILLIAMS. I don't know what time.

Senator FAIRCLOTH. You say you don't remember what she told you other than to tell you that Vince Foster was dead?

Ms. WILLIAMS. I don't remember past that anything.

Senator FAIRCLOTH. You don't remember anything?

Ms. WILLIAMS. No, I don't.

Senator FAIRCLOTH. You mean you get two calls from the First Lady of the United States within an hour, hour and a half, and you don't remember?

Ms. WILLIAMS. I remember the first call, which I've talked about.

Senator FAIRCLOTH. That she said she'll call you back?

Ms. WILLIAMS. Right.

Senator FAIRCLOTH. Let me tell you what you said after you got the second call. This is what you said, and I'm reading you right straight quote.

Ms. WILLIAMS. Could you give me the page of my deposition?

Senator FAIRCLOTH. Yes. It was 36 and 37.

The CHAIRMAN. Senator, just hold for a second until she gets it. OK.

Senator FAIRCLOTH. You got it?

Ms. WILLIAMS. Yes, sir.

Senator FAIRCLOTH. "I don't really remember the ins and outs of the conversation." Now, this is a call from the First Lady of the United States. You don't really remember the ins and outs. "I know I had clear feelings. I was going somewhere. I don't know where I was going, but decided going to the White House would make sense to me." I don't know where I'm going, but going to the White House would make sense. "I went to the office because I thought that something might happen here at that office. I didn't know what to expect, but I thought I should be there. I think I just kind of had—not knowing where to go, you know, I just went there."

Senator SARBANES. Would the Senator yield?

Senator FAIRCLOTH. But in reality——

Senator SARBANES. Would the Senator yield for a question? You are reading from pages 36 and 37 of her deposition?

Senator FAIRCLOTH. Yes.

Senator SARBANES. This is supposedly a conversation she had with the First Lady?

Senator FAIRCLOTH. No, this is testimony she gave to the Independent Counsel.

Senator SARBANES. Testimony about what, about her conversation with whom?

Senator FAIRCLOTH. That's what she said she couldn't remember. This was her conversation with the First Lady.

Senator SARBANES. No, no. That's the question I was asking. As I read the deposition, this is her conversation with Ms. Lieberman. That's the point I'm putting to the Senator.

Senator FAIRCLOTH. Senator Sarbanes, would you let me finish where I'm headed and then we'll see?

Senator SARBANES. I don't think we ought to have a question and answer quoted for them when the question is, "Did you, in this con-

versation with her, indicate you were thinking of going to the White House?" That's the conversation with Lieberman, and you're quoting from that. "What did you think made that decision before, during your call"—this is pages 36 and 37.

Senator FAIRCLOTH. This was her conversation with Lieberman.

The CHAIRMAN. Senator, there is a question because in the depositions there are questions raised with respect to the two phone calls. One phone call is as it relates to Ms. Lieberman, and the other as it relates to the First Lady. I'm going to suggest that our counsel take a look at this because I think that you're quoting from the conversation that took place with Ms. Lieberman.

Senator FAIRCLOTH. I am.

The CHAIRMAN. OK, good.

Senator FAIRCLOTH. No question.

The CHAIRMAN. This is a conversation, and he recognizes it——

Senator FAIRCLOTH. With Ms. Lieberman.

The CHAIRMAN. —that Ms. Williams had with Ms. Lieberman.

Senator FAIRCLOTH. We've had the two conversations with Mrs. Clinton, one on the plane, one off the plane.

The CHAIRMAN. Correct.

Senator FAIRCLOTH. Now she has called Ms. Lieberman.

The CHAIRMAN. Correct.

Senator FAIRCLOTH. You called Ms. Lieberman——

The CHAIRMAN. So we now have the stage set, there are two conversations——

Senator FAIRCLOTH. You called Ms. Lieberman to come get you.

Senator SARBANES. I think it was stated——

Senator FAIRCLOTH. Ms. Lieberman said she didn't know whether she met you down on the corner or at the door, but you get in the car together.

Senator KERRY. Mr. Chairman, I'm having trouble. I want to follow it precisely, and I don't want to interrupt the Senator, but this is pages 36 and 37; is that correct?

Senator FAIRCLOTH. Pages 36 and 37.

Senator KERRY. Page 37 has nothing to do with the conversation whatsoever. It just asks her what she had in her mind, and everything that you read, I understand, is her explanation of what she had in her mind, not a conversation.

The CHAIRMAN. That's correct, and the Senator is reading the deposition, and there was a very valid question as to whose conversation and the state of mind that Ms. Williams had as it relates to those conversations. Now, we're on pages 36 and 37. We're talking about the conversations after she spoke to the First Lady on two occasions, one, the brief call to Ms. Williams saying I'll call back, and then the second one, and now the Senator is taking the deposition from that point.

So, if he characterizes it as a conversation or a state of mind, the fact is it is in the deposition and we'll follow it. Now, I want to give him back—that sets the stage for it. We can all agree to that. Senator, please proceed.

Senator FAIRCLOTH. I assume this is your state of mind. You called Ms. Lieberman and she came after you; is that right?

Ms. WILLIAMS. Yes, sir.

Senator FAIRCLOTH. You went to the White House?

Ms. WILLIAMS. Yes, sir.

Senator FAIRCLOTH. All right. Now, you can't remember what your conversation with Mrs. Clinton was, but Officer O'Neill testified in a hall about 5 feet wide that he saw you coming out of Vince Foster's office with a stack of folders, and we've demonstrated it numerous times here today, but about 5 inches high. Officer O'Neill has been there for 18 years, I believe. Are you saying he didn't see you?

Ms. WILLIAMS. No, I'm saying that I did not carry files from Vince Foster's office.

Senator FAIRCLOTH. I'm sorry?

Ms. WILLIAMS. I am saying I did not carry files from Vince Foster's office.

Senator FAIRCLOTH. Where did you get the files that Officer O'Neill said you had in your hands?

Ms. WILLIAMS. I didn't have files in my hand.

Senator FAIRCLOTH. Officer O'Neill, in a hall 5 feet wide, was grossly mistaken and didn't see and know and understand?

Ms. WILLIAMS. I did not have any files in my hand which I carried out of Vince Foster's office.

Senator FAIRCLOTH. Did you see Officer O'Neill that night?

Ms. WILLIAMS. No, I don't recall seeing Officer O'Neill.

Senator FAIRCLOTH. You didn't even see him?

Ms. WILLIAMS. This is the first time I actually—this is the first time I saw him today, on television. I don't remember seeing him.

Senator FAIRCLOTH. He said you had the files in your hand that night. My time is up, Mr. Chairman.

The CHAIRMAN. Senator, are there any questions on this side?

Senator DODD. Can I quickly, Mr. Chairman—just out of curiosity, Ms. Williams, what is your official title at the White House?

Ms. WILLIAMS. Assistant to the President and Chief of Staff to the First Lady.

Senator DODD. May I get some idea of how many times on an average day you may talk to the First Lady of the United States?

Ms. WILLIAMS. For sure, at least once a day, sometimes more.

Senator DODD. But certainly on a daily basis?

Ms. WILLIAMS. Yes, we try to.

Senator DODD. So the notion that you might get a couple of calls, particularly on the night when a close personal friend of the First Family's, some very close personal friends of yours, has just died is not necessarily extraordinary, and two calls from the First Lady is not an extraordinary event in your day?

Ms. WILLIAMS. No, but these calls were tough calls.

Senator DODD. My point is, here the suggestion was made that one might not remember two calls from the First Lady of the United States.

Ms. WILLIAMS. I understand.

Senator DODD. Certainly, if the average person in this country gets two calls from the First Lady of the United States, we would remember that, but you get two and three calls every day from the First Lady?

Ms. WILLIAMS. Yes, absolutely.

Senator DODD. That's all.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. I'm going to get back to July 22, 1993 again, although a comment you just made a moment ago raised a question in my mind. You indicated the first time you've ever seen Officer O'Neill was today?

Ms. WILLIAMS. Yeah, I don't remember him. In fact, I said to someone today I thought a different person was Officer O'Neill, was the officer. I never knew his name until we got closer to the Senate deposition, but I thought it was a completely different person.

Mr. CHERTOFF. Now, let's get to the 22nd. Did you know at the time that Mr. Nussbaum called you in that he had indicated to one of his assistants, Mr. Neuwirth, that Mr. Neuwirth should do an inventory of the official files on Monday?

Ms. WILLIAMS. No, no. I think I heard about that after the fact.

Mr. CHERTOFF. Did Mr. Nussbaum indicate to you there was any particular urgency about getting the files out of Vincent Foster's office that related to the Clintons' personal documents——

Ms. WILLIAMS. Urgency of getting the personal——

Mr. CHERTOFF. —documents out?

Ms. WILLIAMS. No, not urgency in getting personal documents out.

Mr. CHERTOFF. Did he indicate to you that he had any concern that if the documents were not removed from Vincent Foster's office on the 22nd, if that was not completed on the 22nd, there might be further issues about the desire of law enforcement people to get back into the office?

Ms. WILLIAMS. No, no, not at all.

Mr. CHERTOFF. Now, I want to make sure I'm correct on this because I think an important issue here that we've been dealing with, and I think Senator Kerry raised also, was the question of how it is that the documents wind up in the residence. I take it you are, if nothing else, very firm in the recollection that when Mr. Nussbaum called you, he indicated to you that the documents were to go to the Clintons' lawyers; right?

Ms. WILLIAMS. Right, because I called the personal lawyer, in fact.

Mr. CHERTOFF. That it was your decision on the spot, so to speak, or during the course of your being in Mr. Foster's office, it was your decision to send them to the residence; right?

Ms. WILLIAMS. Yes, sir.

Mr. CHERTOFF. That when you called the First Lady, you simply told her that there are personal files I'm moving to the residence; right?

Ms. WILLIAMS. I don't know exactly. I said something like that. I indicated that the files that were going to Barnett, I wasn't going to get them to Barnett. I decided to put them in the residence, and where did she want them to go.

Mr. CHERTOFF. You didn't tell her where you were; right?

Ms. WILLIAMS. You mean in terms of the office?

Mr. CHERTOFF. Yes. You didn't tell her you were in Mr. Foster's office?

Ms. WILLIAMS. No, I didn't.

Mr. CHERTOFF. You didn't tell her what personal files you were talking about?

Ms. WILLIAMS. No, I didn't. I just called them personal files.

Mr. CHERTOFF. She didn't ask you what files are you talking about?

Ms. WILLIAMS. No. I said personal files.

Mr. CHERTOFF. You didn't say how much there was?

Ms. WILLIAMS. Pardon?

Mr. CHERTOFF. You didn't say how much material there was?

Ms. WILLIAMS. No. Essentially what I said was I'm not going to get the files to Barnett. I know I expressed to her that I was tired and I wanted to go home and told her that I was going to take them to the White House—to the residence, and I asked her where she wanted them put.

Mr. CHERTOFF. That's all?

Ms. WILLIAMS. That's the gist of the conversation that I remember.

Mr. CHERTOFF. This, of course, occurred after Mr. Nussbaum brought you in to take files that he had already sorted through; right?

Ms. WILLIAMS. Yes, sir.

Mr. CHERTOFF. You just simply made an eyeball survey of the office; right?

Ms. WILLIAMS. Yes, sir.

Mr. CHERTOFF. You picked out the taxes file?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Let me read to you from Mr. Nussbaum's deposition because, obviously, the other person who was part of the conversation that brought you over was Mr. Nussbaum. I'm going to page 238, the very bottom of the page, line 21—actually, page 237, line 21.

Question: Then what did you do?

Answer: Then together Maggie and I started looking to try to select, making sure we took Clinton personal files rather than any other files.

Does that fit with your recollection?

Ms. WILLIAMS. No, my recollection is just as I've expressed it.

Mr. CHERTOFF. "And where did you look?"

Ms. WILLIAMS. I'm sorry?

Mr. CHERTOFF. I'm continuing to read:

Question: And where did you look?

This is Mr. Nussbaum's answer:

Answer: Primarily in the credenza. I don't think we looked very many other places if we looked in another place at all. We looked in the credenza, primarily. We identified together files which appeared to be and which were Clinton personal files—investments, taxes and the like—and they were put into a box. I don't remember who put them into the box, and they were taken out of the office.

Does that fit with your recollection?

Ms. WILLIAMS. My recollection that I picked up a tax file and put it either in a box or on a table of files that had already been collected and designated as personal files is correct.

Mr. CHERTOFF. But the business about looking through the credenza together, that doesn't fit with your recollection?

Ms. WILLIAMS. As I said before, the tax file was in the credenza. I don't remember looking through it together with Mr. Nussbaum.

Mr. CHERTOFF. I'm continuing to read:

Question: Who took them out?

Answer: I don't remember who took them out. I remember just—I don't remember. It could be Tom Castleton. I have some recollection of—he's the kid who worked in our office—calling somebody to help Maggie take them. I didn't carry them out, and I don't think Maggie herself carried them out, although it's possible she did carry some of them out.

Now, that is basically consistent with your recollection; right?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Continuing:

Question: What was your understanding of where they were going?

Answer: I'm trying to think what I knew at that time. Obviously, I presumed they were going to the residence, and I think Maggie and I probably discussed that. That's the most likely, send them to the residence and talk to the Clintons, and they will be sent from the residence on to their personal attorneys.

Question: What was the discussion about putting them in the residence?

Answer: Simply take the files, give them to the Clintons, which means give them to the Clintons in their residence. The Clintons weren't there. Hillary wasn't there.

Question: The President was there?

Answer: The President was there.

Now, how does that square with your recollection?

Ms. WILLIAMS. That's Bernie Nussbaum's deposition, and I have given you what I recall.

Mr. CHERTOFF. It's still your recollection that it was Mr. Nussbaum who indicated to you that the decision had been made to have the stuff sent to the lawyers?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Now, you remember Tom Castleton?

Ms. WILLIAMS. Uh-huh.

Mr. CHERTOFF. Young man?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. Do you know how he came to work in the White House?

Ms. WILLIAMS. No.

Mr. CHERTOFF. You know he had some kind of internship or similar position at the White House Counsel's Office?

Ms. WILLIAMS. I thought he was an intern, yes.

Mr. CHERTOFF. He was someone who was regularly around?

Ms. WILLIAMS. I may have seen him a few times. He was in the office. He looked young. He looked strong.

Mr. CHERTOFF. He was the fellow that helped you take the box and the papers up to the residence; right?

Ms. WILLIAMS. Yes, sir.

Mr. CHERTOFF. Did you tell him that the reason the documents had to go to the residence was so the President or the First Lady could review their contents?

Ms. WILLIAMS. No, I do not recall saying that to Tom Castleton.

Mr. CHERTOFF. When you say you don't recall it, are you telling us, affirmatively, that you did not say it, or are you just saying you don't have a recollection one way or the other?

Ms. WILLIAMS. I would like to say, affirmatively, I did not say it because I can't imagine why I would have that discussion with an intern about the files going to the President and the First Lady. I know that I told him we were going to the residence because I figured he needed to know where he was going, but I can't imagine that I said more than that. So I do not recall having that discussion with him.

Mr. CHERTOFF. I'm asking you now, are you now reasoning this as a matter of logic, saying that there's no reason you would have talked to him about it, or are you telling us from your memory of that incident—and we've had a long day today on memories and people get confused, and you're entitled to be confused——

Ms. WILLIAMS. Here's what I'm doing. I'm telling you two things. The first thing is I'm telling you I don't recall having that conversation. The second thing, which perhaps I should not do, but I was trying to—I mean, part of why I don't recall having that conversation is it seems totally out of character for me to discuss anything having to do with the First Lady and the President with, one, an intern who I did not know very well. It just seems out of character for me to have said that, so I do not recollect it. Two, although not an answer to your question, is my giving you some information about myself, which is it is highly unlikely I would have this kind of discussion with an intern.

Mr. CHERTOFF. Let me read to you what this intern testified to in his deposition at page 139, starting at line 7:

Question: And what did she tell you?
Answer: She told me that we were taking the boxes into the residence.

That part you agree with?

Ms. WILLIAMS. Yes.

Mr. CHERTOFF. I'm continuing to read:

Question: And did she say where in the residence?
Answer: No.
Question: Did she say why you were taking them?
Answer: Yes.
Question: What was her statement?
Answer: She said that the President or the First Lady had to review the contents of the boxes to determine what was in them.

You disagree with that?

Ms. WILLIAMS. Yes, I do.

Mr. CHERTOFF. You also do not agree with Mr. Nussbaum's testimony that, in his discussions with you, he indicated that the documents were to go to the residence and the Clintons would be there, and they would make a decision where they would go? You disagree with that?

Ms. WILLIAMS. No, that is not what I recall.

Mr. CHERTOFF. You disagree with both of those?

Ms. WILLIAMS. That is not what I recall.

Mr. CHERTOFF. I'm finished. Thank you, Mr. Chairman.

Senator KERRY. Can I ask, Mr. Chairman, on July 22, 1993, that was what day of the week, do you recall?

Ms. WILLIAMS. Thursday.

Senator KERRY. So it was a typical full working day at the White House——

Ms. WILLIAMS. Yes.

Senator KERRY. —except under difficult circumstances because of the funeral; correct?

Ms. WILLIAMS. Yes.

Senator KERRY. Were people around, generally?

Ms. WILLIAMS. Yes, it was a full workday.

Senator KERRY. What time of the afternoon was it that you went into Mr. Nussbaum's office to collect the files?

Ms. WILLIAMS. I think it was late afternoon. I don't know exactly the time, but late afternoon.

Senator KERRY. Would somewhere in the vicinity of 3 p.m. sound correct to you?

Ms. WILLIAMS. I really don't know. Probably from the time Bernie called me, from the time I got over there, maybe it was 3:30, 4 p.m. The reason I think it was late afternoon is because the person who was going to open the closet for me, Carolyn Huber, she was a little put out with me because it was late, and I believe she said something like I have to get to the Metro before dark or I have to get someplace before it gets late.

Senator KERRY. Now, when you went into Mr. Nussbaum's office, the files were collected and put in a box at that point in time?

Ms. WILLIAMS. No. As I said before, when I went into Mr. Foster's office, there were stacks of files all over the place.

Senator KERRY. Were other people around at that time?

Ms. WILLIAMS. The only person I remember actually being in and out of Vince's office was Debbie Gorham, Vince's secretary. But in the foyer of the White House Counsel's suite, there were other people.

Senator KERRY. The secretaries were there; correct, in the foyer?

Ms. WILLIAMS. Yes.

Senator KERRY. Other offices were open on that floor at that time?

Ms. WILLIAMS. Oh, yes.

Senator KERRY. Other people were working on that floor at that time?

Ms. WILLIAMS. Oh, yes. It was a full workday.

Senator KERRY. When you picked up—excuse me. You decided you needed somebody just to carry these; correct?

Ms. WILLIAMS. Right. Like—right, that's true.

Senator KERRY. You did not select somebody close to the campaign, did you?

Ms. WILLIAMS. No, I just——

Senator KERRY. Did you select somebody that you trusted to keep a secret?

Ms. WILLIAMS. I looked around for someone who looked like an intern. Sorry. I mean, I was——

Senator KERRY. You just grabbed somebody who could carry a box?

Ms. WILLIAMS. Yeah.

Senator KERRY. Correct?

Ms. WILLIAMS. Yes.

Senator KERRY. Did you ask that person just to pick up the box and carry it?

Ms. WILLIAMS. Yeah—I don't know how I said it, but yeah.

Senator KERRY. Did you walk right out of the door with the box?

Ms. WILLIAMS. I'm not sure if I stopped to pick up these dresses first or we went right out to the elevator, but we left Vince's office.

Senator KERRY. Was the box covered or open?

Ms. WILLIAMS. Covered.

Senator KERRY. It was clearly one of those file cabinet-type cardboard——

Ms. WILLIAMS. It was like a Xerox box, a box that Xerox paper would come in.

Senator KERRY. It was full of files?

Ms. WILLIAMS. I don't think it was full. It wasn't full of files.

Senator KERRY. Now, you walked with this box from there to the residence; is that correct?

Ms. WILLIAMS. Yes, sir.

Senator KERRY. In the afternoon, late afternoon?

Ms. WILLIAMS. Yes, sir.

Senator KERRY. Were people around you when you did that?

Ms. WILLIAMS. Oh, yes, sir.

Senator KERRY. You had to pass by the Press Office, didn't you, to go to the residence?

Ms. WILLIAMS. Yes.

Senator KERRY. You had to pass through the main lobby reception area, did you not?

Ms. WILLIAMS. Yes.

Senator KERRY. From there, you passed another room with more offices and went around the corner to the Press Office?

Ms. WILLIAMS. Right.

Senator KERRY. Through an open hallway?

Ms. WILLIAMS. Then more offices.

Senator KERRY. Aren't there Secret Service agents posted visibly in that hallway out there?

Ms. WILLIAMS. The entire route.

Senator KERRY. The entire route?

Ms. WILLIAMS. Past the Rose Garden and——

Senator KERRY. People can't exactly go into the President's residence, can they, without passing by some guards?

Ms. WILLIAMS. No, not at all.

Senator KERRY. Did you pass by those guards?

Ms. WILLIAMS. Oh yes.

Senator KERRY. With this box?

Ms. WILLIAMS. Yes.

Senator KERRY. With an intern carrying it?

Ms. WILLIAMS. Yes.

Senator KERRY. Was the box draped in any black cloak?

Ms. WILLIAMS. No.

Senator KERRY. Was the box hidden in any way?

Ms. WILLIAMS. No.

Senator KERRY. Did you tell the intern to be careful that nobody saw him?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Were there any secretive maneuvers that you engaged in?

Ms. WILLIAMS. No, I did not.

Senator KERRY. Did you get right into the elevator or did you walk up the stairs to the residence?

Ms. WILLIAMS. Oh, I'm sure I took the elevator.

Senator KERRY. Where did you meet Ms. Huber?

Ms. WILLIAMS. She was actually on the ground floor.

Senator KERRY. Did she meet you in the residence or downstairs?

Ms. WILLIAMS. She was downstairs, right below the residence.

Senator KERRY. Did you know where you were going to put this box prior to seeing her?

Ms. WILLIAMS. I had also spoken with Carolyn Huber. When I talked to Mrs. Clinton and asked where do you want them put, she said to me call Carolyn Huber; I believe she has a closet that she puts stuff in, or call Carolyn Huber and let Carolyn decide where they were going to go. But it was clearly call Carolyn Huber.

Senator KERRY. So the bottom line is there wasn't some great midnight cloak and dagger effort to scurry a series of files into the residence?

Ms. WILLIAMS. No, there was not.

Senator KERRY. In fact, the White House released the information with respect to this, did they not, that the files were placed up in the residence?

Ms. WILLIAMS. Yes.

Senator KERRY. So this wasn't—strike that.

Now, having said that and gone through that series of questions, Ms. Williams, I still want to come back to that good ol' average American commonsense test here that remains. It's clear that the documents went over there in some very open and nonclandestine fashion. I think people are still struggling a little bit with the question of how. I suppose if these are personal documents that belong to the President and the First Lady, it's perfectly legitimate that they would go over there and be there, but there seems to be a difference between how Mr. Nussbaum remembers where they were to go and your memory of that. I just wonder if there's any way you can help us sort through those discrepancies within these testimonies.

Ms. WILLIAMS. I'm just telling you pretty much what I remember. I've never discussed this with Mr. Nussbaum, and hearing the deposition read and that Mr. Nussbaum believed he made the decision about putting them in the residence actually made me feel great because I thought maybe I did tell him that they were going to the residence. So I can't clear up the discrepancy. I just remember what I remember.

Senator SARBANES. That's it.

The CHAIRMAN. First of all, Ms. Williams and Ms. Lieberman, I want to thank you both for being with us. Much of the questioning, I think, was very detailed. We recognize it's not always easy to attempt to reconstruct something. I think one of the Senators indicated they had trouble recalling what took place yesterday. I fall in that category.

So I share that with you. To go back and to have been examined repeatedly, that doesn't make the process any easier. As a matter of fact, I remember one time I forgot when a very significant event occurred.

I was so certain that I had learned some information at a particular time. I was positive, and I was surprised when I checked the newspaper clips and I couldn't find this incident that I recalled so vividly in my own mind on that particular occasion. Indeed, it was a year before, and I was shocked and paralyzed because that did not fit my recollection.

So some of these things absolutely are understandable. Total recall is impossible. Some questions remain. We will have other wit-

nesses. I think that you have testified to the best of your ability. I thank you for your appearance. I'm glad that we were able to finish this evening. We stand in recess until tomorrow at 9:30.

Ms. WILLIAMS. Thank you, Senator.

Senator SARBANES. Mr. Chairman, the panel will be——

The CHAIRMAN. I think the counsel is still working it out, but Mr. Spafford will testify first, Spafford, S-p-a-f-f-o-r-d, because he has a problem with time, and that's a consideration, so we're going to move him up first.

Senator SARBANES. Then we'll do the other panel afterwards.

The CHAIRMAN. Then we'll do the other panel, and hopefully finish earlier than this evening.

[Whereupon, at 6:50 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Thursday, July 27, 1995.]

[Prepared statements, additional material, and appendix supplied for the record follow:]

AFFIDAVIT OF EDWARD S.G. DENNIS, JR.
COUNSEL TO MARGARET A. WILLIAMS

Edward S.G. Dennis, Jr., states as follows:

1. I am a partner at the law firm Morgan, Lewis & Bockius and have been a partner there since September 1990.

2. I am counsel to Margaret A. Williams, Chief of Staff to The First Lady. Ms. Williams has partially waived her attorney-client privilege and has authorized me to make and disclose this affidavit.

3. In approximately July 1994, I was advised by the Office of Independent Counsel that an individual had claimed that on the night of Vincent Foster's death he saw my client, Margaret Williams, leaving the White House office of Vince Foster with documents in her arms. The Office of Independent Counsel did not tell me the identity of this individual nor was I told of further details of this individual's statement. Ms. Williams categorically denied taking any documents from Foster's office and on my advice took a polygraph test on the subject.

4. I arranged to have Ms. Williams polygraphed. This polygraph was administered by a distinguished expert in the field, Mr. William Anderson. Mr. Anderson has 27 years of experience as a supervisory Special Agent and polygrapher with the FBI, during which he performed hundreds of polygraph examinations, including several for the Watergate Special Prosecutor. His examination confirmed that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.

5. In order to persuade the Office of Independent Counsel on this point, I proposed to have Ms. Williams take a polygraph examination to be administered by the Office of Independent Counsel. The Office of Independent counsel accepted my offer. As she had volunteered to do, Ms. Williams submitted to a polygraph examination by the Office of Independent Counsel. Before the examination started, I advised the polygrapher that Ms. Williams had already been polygraphed, so that he could satisfy himself that the previous polygraph would not affect the results of his examination. The polygrapher from the Office of Independent Counsel indicated that the previous examination would not affect the results of his own test, and the examination proceeded.

6. During this examination, Ms. Williams again stated that she did not remove any documents from Foster's office on the night of his death. After the examination was completed, the polygrapher advised me that the examination indicated that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 26, 1995.

Edward S.G. Dennis, Jr.

NOTARY: MARK S. COSTELLO
DISTRICT OF COLUMBIA
CITY OF WASHINGTON

Subscribed and sworn to before me this 26th day of July, 1995.

Mark S. Costello
Notary Public

My Commission Expires May 14, 1996

THE STIRLING CORP.
RT. 1 BOX 212
GLENMOORE, PA 19343
(610) 469-8638 • Fax (610) 469-8639

August 1, 1994

Edward S. G. Dennis, Jr., Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

Dear Mr. Dennis,

On Saturday July 30, your client Margaret Ann Williams came to my laboratory to be tested with the polygraph. At issue were questions of her knowledge of, or a personal act in, removal of papers or documents from the office of Presidential Counsel Vincent Foster the evening of July 20, 1993.

These issue questions were asked of Williams in the test process: (Her answer in parenthesis)

Did you remove any documents form Fosters' office that night? (NO)
To your personal knowledge did anyone remove documents from Fosters' office that night? (NO)
Did you discuss removing any documents, excepting a suicide note, from Fosters' office that night? (NO)
Were you aware that night of others discussing document removal excepting a suicide note? (NO)
Do you now know of anyone removing documents from Fosters' office that night? (NO)
Excepting a suicide note, do you now know of any discussion by anyone about removal of documents from Fosters' office that night? (NO)

Prior to this question process I told Williams that "document" was to include writings and papers of any sort including a suicide note. I also told her "remove" meant documents found in, and taken from, Fosters' office, of any sort and for any purpose, but did not include such things as papers which may have been in her purse and were carried in and then out by her. Further, that for her to "know" it would be necessary that she had done or witnessed the act or statement personally or have learned of it directly from a participant. That "know" did not mean knowledge gained from news media, non participants, or another hearsay sources. She told me she understood and would answer accordingly.

The emotional responses recorded as Williams answered the above issue questions were compared with her responses to certain control questions. These controls were derived by me from the pre-test interview of Williams and my own experience. Each of the issue questions was asked of Williams at least three times in the process.

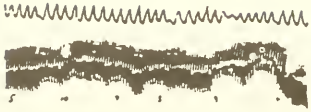
In this comparison it was seen that Williams recorded emotional responses to controls was equal to or greater than, her responses to issue questions. Based on this comparison it is my opinion Williams was not deceptive (was truthful) when she answered these issue questions above as she did.

A copy of my resume is attached.

Very truly yours,

William B. Anderson

Wm. B. Anderson, Jr.
RT 1, Box 212
Glenmoore, PA 19343
(610) 469-8638



Polygraph Examinations
Criminal & Financial Investigations
Consultation
Fax (610) 469-8639

Training and Education

U.S. Marine Corps, Pacific Islands & China, OCS WWII; B.A. Penn State University 1948; FBI Academy, 1948; and FBI Polygraph School #1 Oct. 1960, plus current polygraph seminars.

Investigative Experience

Special Agent and Supervisor, FBI, 27 years (1948-1974). Included a very wide range of criminal investigation, from simple to extremely complicated, and of all types, from violence to sophisticated fraud. Thirty special commendations for notable success in these investigations and as FBI Supervisor.

October 1979 to November 1980 – On leave of absence from the University to serve as Executive Director of Pennsylvania State Crime Commission, an independent state agency with a statutory charter to investigate organized crime and public corruption. Produced the "1980 Report - A Decade of Organized Crime", a standard reference work.

1974-Present – Investigative consultant to, and operational for, corporations, government agencies and law firms with such problems as violations of trust, research, and personnel matters. Fiscal and Management Analyses in Distilling, Banking, Paper, Publishing, Precious Metals, Mining, Hospital, Rail Industries, and Corporate Takeovers, among others.

Polygraph Experience

Hundreds of polygraph examinations in investigative direction of FBI criminal investigation, 1960-1974, including: Extortion, Bank Robbery, Bank Embezzlement, Forgery, Aircraft Piracy, Kidnapping, Theft of Government Property, Obstruction of Justice, Perjury, Organized Crime, White Collar Crime, and Espionage. Many were of great complexity, several done for the Watergate Special Prosecutor.

Since 1974, conducted hundreds of examinations for newspapers, corporations, law firms, attorneys in private practice and government agencies where precision and confidentiality were of special importance. Most involved charges of serious criminal acts, frequently fiscal in nature. Admitted as expert polygraph witness in PA courts.

Publications

Author of "Notable Crime Investigations", Thomas Publishing, Springfield, IL, 1987, a college textbook in criminal investigation. Focuses on investigative processes and solutions in murder, kidnapping, rape and armed robbery in New York City, Western PA, Kansas, Houston, Philadelphia, Los Angeles, Bellingham, Washington, and Sydney, Australia.

Security Instruction/Consultation

Lethal Weapons Training Act instruction for Corporate Security Staffs at General Electric, Sun Oil, Sun Ship, Franklin Mint, Matthey Bishop, Inc., and various private security companies.

Security consultant to Girard Bank, Mellon Bank, Fidelity Bank, Matthey Bishop, Inc., and Franklin Mint.

University Employment

January 1975 to August 1986 – professor, Criminal Justice Department, West Chester University, West Chester, Pennsylvania. Chairman 1982-86. Instructing undergraduate and graduate students in criminal investigation, generally. Specific courses: Major Case Investigation, Official Corruption, Organized Crime, Scientific Crime Detection, Instrumental Detection of Deception (polygraph), White Collar Crime, Municipal Police Administration, Notable Criminal Cases and the Honors Program in Criminal Justice. Lecturer on polygraph process, Dickenson Law School, Carlisle, PA.

5/94 WBA

Contradictions, Inconsistencies and Changes
in
Testimony
of
Henry O'Neill, Secret Service Officer

Contradictions and Changes in Deposition Testimony

Officer O'Neill provided deposition testimony under oath to the Special Committee on June 23, 1995. A review of Officer O'Neill's deposition testimony evidences the following internal contradictions.

1. Different testimony as to the number of people O'Neill saw enter the White House Counsel's suite after it was opened by the clearing crew.

At pages 38-9, Officer O'Neill testifies that while speaking with Howard Pastor in the hallway outside the Counsel's Office he saw unidentified people in addition to Bernard Nussbaum enter the office.

Later, at pages 132-33, O'Neill testifies that he didn't see anyone other than Nussbaum enter the White House Counsel's Office.

2. Different testimony regarding the number of voices Officer O'Neill heard in the Counsel's Suite.

At page 38, Officer O'Neill testifies that he heard "voices...women's voices in" the Counsel's suite the night of July 20th.

Later, at pages 101 and 106, O'Neill testifies that he heard a single woman's "voice" coming from the Counsel Office.

3. Different testimony regarding the time that Officer O'Neill saw Patsy Thomasson in David Watkins doorway.

At page 73-79, O'Neill testifies that, after his second of three visits to the Counsel's Office the night of July 20th, he went down to the first floor of the West Wing and soon thereafter saw Patsy Thomasson in the door to Watkins office.

He testifies again, at page 102, that he saw Ms. Thomasson after his second visit to the Counsel's Office and before the office was locked.

Later, at page 163, he testifies that he saw Ms. Thomasson in the door to Watkins' office but that this was after his third,

and last, visit to the Counsel's Office.

4. Contradictory testimony as to whether Officer O'Neill saw Ms. Thomasson in the doorway of David Watkins office.

O'Neill's testimony concerning seeing Ms. Thomasson at the Watkins office doorway after his last, third visit to the Counsel's Office is contradicted by his testimony at pages 94-5. There O'Neill testified that he did not see Ms. Thomasson after locking the Counsel's Office on the evening of July 20th.

Contradictions and Changes in Deposition and Hearing Testimony

5. Different versions as to whether and under what circumstances Officer O'Neill saw Maggie Williams.

At pages 80-81, Officer O'Neill testified that he saw Maggie Williams leave the Counsel's Office carrying a 3-5 inch stack of file folders.

Later, at pages 175-6, O'Neill testified that he was confused, that he could not remember if he saw Ms. Williams leaving the Counsel's Office, that she may have been carrying a box, like a small hat box, on top of file folders.

Later in his hearing testimony Officer O'Neill described the box as a small hatbox, page 100.

Still later in his hearing testimony, Mr. O'Neill amended his earlier testimony, at page 104, saying, "Just strike the hatbox."

6. Testimony regarding whether Officer O'Neill saw or spoke with the cleaning women on his second entering of the Counsel's Suite.

O'Neill, when asked whether he saw the two cleaning women when he went to the Counsel's Office the second time on July 20th, testified at page 157-8 "I do not recall if they were there."

O'Neill then abruptly changed his testimony and stated that "Actually, I think I spoke with them, yes."

7. Testimony regardng whether Vincent Foster's office was cleaned and whether his unclassified trash bag emptied that evening.

O'Neill testifies, at pages 52-3, in response to multiple questions, that the cleaning crew he accompanied on the night of

July 20th to the Counsel's suite did in fact clean Vincent Foster's office.

Officer O'Neill repeated this testimony in his Special Committee hearing testimony at page 49, testifying that the cleaning crew did not enter Vincent Foster's office.

There is testimony by several White House employees, including Sylvia Mathews, at pages 57-61, and Bernard Nussbaum, at page 217, that a trash bag containing trash that had come from Vincent Foster's office was found in a common trash area outside the Counsel's Office.

8. Different recollections under oath regarding collection of White House Counsel's Office Suite classified burn bags.

O'Neill testified to the Committee at the hearing, at page 27 of the Hearing Transcript, that he could not recall if he collected the burn bag material from the Counsel's Suite. (O'Neill was the only person in the White House Counsel Office cleaning crew authorized to clean burn bags.)

Yet, in his deposition testimony, at pages 147-8, O'Neill testified that he was confident that he never emptied any of the burn bag material from the Counsel's Office ("I never did").

9. Contradictions in testimony as to whether Mr. Foster even had a classified burn bag.

O'Neill's deposition testimony, at page 24, was that there <u>was</u> a burn bag in Vincent Foster's office.

Yet, before the Special Committee, page 14, Officer O'Neill testified that he could not recall whether there was a burn bag in Foster's office.

10. Contradictory testimony as to whether O'Neill read newspaper reports regarding documents being taken from Mr. Foster's office.

At his deposition, O'Neill testified, at page 106, that after July 20th he read newspaper articles about documents being taken from the counsel's office, "In fact, I think by Maggie Williams, in fact."

O'Neill at first testified, at page 84, before the Special Committee testimony that he "had never read anything about anyone taking any files out of any office." Then, later, at page 121, later he testified that he had read something about the matter.

11. Officer O'Neill's Special Committee testimony and his

deposition testimony provide three versions of Evelyn Lieberman's identification of Maggie Williams.

The differences suggest that Officer O'Neill may be susceptible to suggestion or influence through information he learns subsequent to an event.

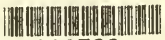
For example, at the hearing Officer O'Neill testified, at page 23, that Ms. Lieberman told him that Ms. Williams was "the First Lady's chief of staff." Officer O'Neill's deposition testimony, at page 80, was that Ms. Lieberman only introduced Ms. Williams as "Maggie Williams."

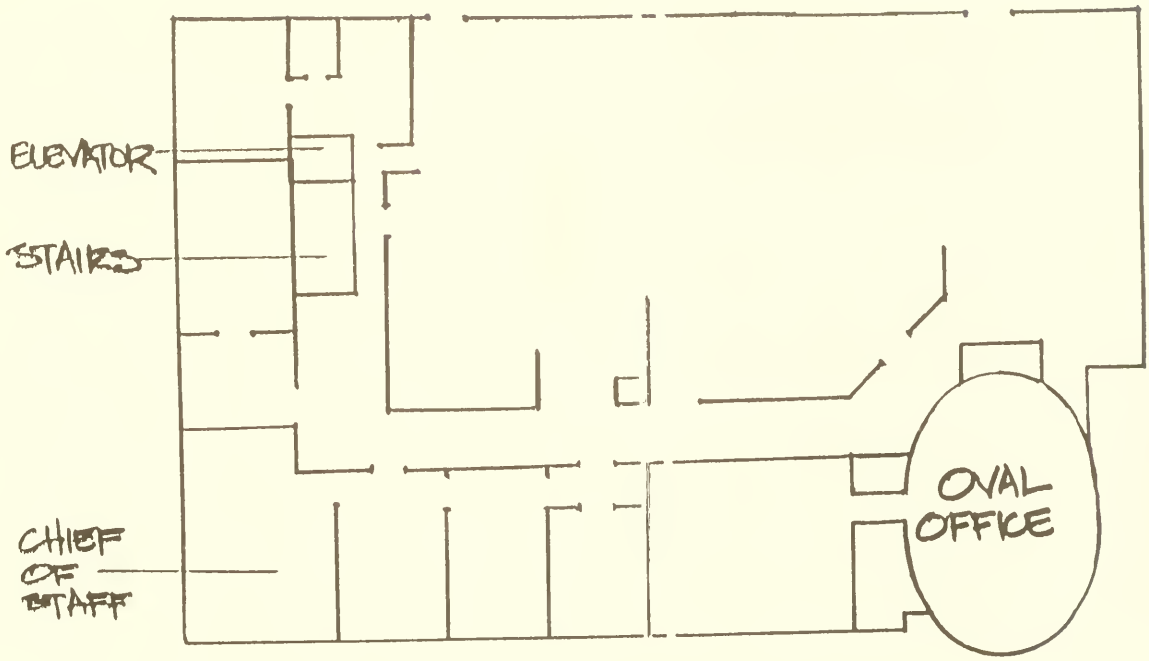
Yet at his deposition, at page 172, Officer O'Neill testified that Ms. Williams had been introduced by Ms. Lieberman as the "First Lady's secretary."

APPENDIX

'20/93	08:03	561	WW 2ND FL RM.208	CASTLE	SECURE ALARM
	08:03	561	WW 2ND FL RM.208	CONTROL CENTER 1	ACCESS SET
	20:04	561	WW 2ND FL RM.208	CASTLETON	ACCESS ALARM
	20:04	561	WW 2ND FL RM.208	CASTLETON	SECURE ALARM
	21:14	561	WW 2ND FL RM.208	CONTROL CENTER 1	SECURE RESET
	22:42	561	WW 2ND FL RM.208	O'NEILL	SECURE ALARM
	22:42	561	WW 2ND FL RM.208	CONTROL CENTER 1	ACCESS SET
	23:41	561	WW 2ND FL RM.208	O'NEILL	ACCESS ALARM
	23:41	561	WW 2ND FL RM.208	O'NEILL	SECURE ALARM
	23:42	561	WW 2ND FL RM.208	CONTROL CENTER 1	SECURE RESET
2 3	07:01	561	WW 2ND FL RM.208	PONN	SECURE ALARM
	07:01	561	WW 2ND FL RM.208	CONTROL CENTER 1	ACCESS SET
	11:20	561	WW 2ND FL RM.208	CONTROL CENTER TEST	SECURE ALARM
	11:20	561	WW 2ND FL RM.208	CONTROL CENTER	ACCESS RESET
	11:20	561	WW 2ND FL RM.208	CONTROL CENTER TEST	ACCESS ALARM
	20:17	561	WW 2ND FL RM.208	CONTROL CENTER 1	TAMPER ALARM

22-26/93 NO ALARM ACTIVITY





THE WHITE HOUSE

WEST WING - FIRST FLOOR

THE WHITE HOUSE
WEST WING - SECOND FLOOR
ELEVATOR
STAIRS
VINCENT FOSTER
BERNARD NUSSBAUM
RECEPTION

The Review of Documents in Vincent Foster's Office

TIME	FROM	TO
July 21, 1993:		
Approx. 5:00 p.m.	Bernard Nussbaum agrees with Philip Heymann and David Margolis that senior Justice Department officials and Nussbaum will conduct a joint review of documents in Foster's office at 10:00 a.m. on July 22.	
11:00 - 11:01 p.m.	**Susan Thomases Hotel**	**Rodham Residence**
July 22, 1993:		
7:44 - 7:51 a.m.	Margaret Williams Residence	Rodham Residence
7:57 - 8:00 a.m.	Rodham Residence	Susan Thomases Hotel
8:01 a.m. (pager)	Susan Thomases Hotel	Bernard Nussbaum
8:25 - 8:29 a.m.	**Susan Thomases Hotel**	**Rodham Residence**
9:00 a.m. (message)	Susan Thomases	Margaret Williams
Approx. 10:00 a.m.	Nussbaum reneges on the agreement allowing Justice Department officials to review documents in Foster's office.	
Morning	Nussbaum advises Stephen Neuwirth that the First Lady and Susan Thomases are concerned about law enforcement officials having "unfettered access" to documents in Foster's office.	

The Review of Documents in Vincent Foster's Office

TIME	FROM	TO
July 22, 1993:		
Late Morning	Senior White House officials meet to discuss the upcoming review of documents in Foster's office.	
10:48 - 11:54 a.m.	Susan Thomases calls the office of the Chief of Staff, Thomas McLarty, three times and the office of the Chief of Staff to the First Lady, Margaret Williams, three times.	
12:47 p.m. (pager)	Rodham Residence (Capricia)	Margaret Williams
12:55 - 12:56 p.m.	Margaret Williams Residence	Rodham Residence
1:25 - 1:31 p.m.	White House	Rodham Residence
Approx. 1:15 - 3:00 p.m.	Nussbaum describes documents in Foster's office, but does not allow law enforcement officials to review any documents.	
3:08 - 3:18 p.m.	**Susan Thomases**	**Margaret Williams**
Approx. 3:30 - 4:30 p.m.	Nussbaum and Williams conduct a second review of documents in Foster's office and segregate Clinton personal files.	
Approx. 4:30 - 5:00 p.m.	Williams calls Mrs. Clinton and transfers Clinton personal files to the Residence.	
5:13 - 5:22 p.m.	Susan Thomases	Margaret Williams
7:12 - 7:13 p.m.	Susan Thomases	Rodham Residence

41-371 97 - 17

AFFIDAVIT OF EDWARD S.G. DENNIS, JR.
COUNSEL TO MARGARET A. WILLIAMS

Edward S.G. Dennis, Jr., states as follows:

1. I am a partner at the law firm Morgan, Lewis & Bockius and have been a partner there since September 1990.

2. I am counsel to Margaret A. Williams, Chief of Staff to The First Lady. Ms. Williams has partially waived her attorney-client privilege and has authorized me to make and disclose this affidavit.

3. In approximately July 1994, I was advised by the Office of Independent Counsel that an individual had claimed that on the night of Vincent Foster's death he saw my client, Margaret Williams, leaving the White House office of Vince Foster with documents in her arms. The Office of Independent Counsel did not tell me the identity of this individual nor was I told of further details of this individual's statement. Ms. Williams categorically denied taking any documents from Foster's office and on my advice took a polygraph test on the subject.

4. I arranged to have Ms. Williams polygraphed. This polygraph was administered by a distinguished expert in the field, Mr. William Anderson. Mr. Anderson has 27 years of experience as a supervisory Special Agent and polygrapher with the FBI, during which he performed hundreds of polygraph examinations, including several for the Watergate Special Prosecutor. His examination confirmed that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.

5. In order to persuade the Office of Independent Counsel on this point, I proposed to have Ms. Williams take a polygraph examination to be administered by the Office of Independent Counsel. The Office of Independent counsel accepted my offer. As she had volunteered to do, Ms. Williams submitted to a polygraph examination by the Office of Independent Counsel. Before the examination started, I advised the polygrapher that Ms. Williams had already been polygraphed, so that he could satisfy himself that the previous polygraph would not affect the results of his examination. The polygrapher from the Office of Independent Counsel indicated that the previous examination would not affect the results of his own test, and the examination proceeded.

6. During this examination, Ms. Williams again stated that she did not remove any documents from Foster's office on the night of his death. After the examination was completed, the polygrapher advised me that the examination indicated that Ms. Williams was truthful in her assertion that she did not remove any documents from Foster's office on the night of his death.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 26, 1995.

Edward S.G. Dennis, Jr.

NOTARY: MARK S. COSTELLO
DISTRICT OF COLUMBIA
CITY OF WASHINGTON

Subscribed and sworn to before me this 26th day of July, 1995.

Mark S. Costello
Notary Public

My Commission Expires May 14, 1996

THE STIRLING CORP.
RT. 1 BOX 212
GLENMOORE, PA 19343
(610) 469-8638 • Fax (610) 469-8639

August 1, 1994

Edward S. G. Dennis, Jr., Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

Dear Mr. Dennis,

On Saturday July 30, your client Margaret Ann Williams came to my laboratory to be tested with the polygraph. At issue were questions of her knowledge of, or a personal act in, removal of papers or documents from the office of Presidential Counsel Vincent Foster the evening of July 20, 1993.

These issue questions were asked of Williams in the test process: (Her answer in parenthesis)

Did you remove any documents form Fosters' office that night? (NO)
To your personal knowledge did anyone remove documents from Fosters' office that night? (NO)
Did you discuss removing any documents, excepting a suicide note, from Fosters' office that night? (NO)
Were you aware that night of others discussing document removal excepting a suicide note? (NO)
Do you now know of anyone removing documents from Fosters' office that night? (NO)
Excepting a suicide note, do you now know of any discussion by anyone about removal of documents from Fosters' office that night? (NO)

Prior to this question process I told Williams that "document" was to include writings and papers of any sort including a suicide note. I also told her "remove" meant documents found in, and taken from, Fosters' office, of any sort and for any purpose, but did not include such things as papers which may have been in her purse and were carried in and then out by her. Further, that for her to "know" it would be necessary that she had done or witnessed the act or statement personally or have learned of it directly from a participant. That "know" did not mean knowledge gained from news media, non participants, or another hearsay sources. She told me she understood and would answer accordingly

The emotional responses recorded as Williams answered the above issue questions were compared with her responses to certain control questions. These controls were derived by me from the pre-test interview of Williams and my own experience. Each of the issue questions was asked of Williams at least three times in the process.

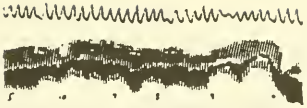
In this comparison it was seen that Williams recorded emotional responses to controls was equal to or greater than, her responses to issue questions. Based on this comparison it is my opinion Williams was not deceptive (was truthful) when she answered these issue questions above as she did.

A copy of my resume is attached.

Very truly yours,

William B. Anderson

Wm. B. Anderson, Jr.
RT 1, Box 212
Glenmoore, PA 19343
(610) 469-8638



Polygraph Examinations
Criminal & Financial Investigations
Consultation
Fax (610) 469-8639

Training and Education

U.S. Marine Corps, Pacific Islands & China, OCS WWII; B.A. Penn State University 1948; FBI Academy, 1948; and FBI Polygraph School #1 Oct. 1960, plus current polygraph seminars.

Investigative Experience

Special Agent and Supervisor, FBI, 27 years (1948-1974). Included a very wide range of criminal investigation, from simple to extremely complicated, and of all types, from violence to sophisticated fraud. Thirty special commendations for notable success in these investigations and as FBI Supervisor.

October 1979 to November 1980 – On leave of absence from the University to serve as Executive Director of Pennsylvania State Crime Commission, an independent state agency with a statutory charter to investigate organized crime and public corruption. Produced the "1980 Report - A Decade of Organized Crime", a standard reference work.

1974-Present – Investigative consultant to, and operational for, corporations, government agencies and law firms with such problems as violations of trust, research, and personnel matters. Fiscal and Management Analyses in Distilling, Banking, Paper, Publishing, Precious Metals, Mining, Hospital, Rail Industries, and Corporate Takeovers, among others.

Polygraph Experience

Hundreds of polygraph examinations in investigative direction of FBI criminal investigation, 1960-1974, including: Extortion, Bank Robbery, Bank Embezzlement, Forgery, Aircraft Piracy, Kidnapping, Theft of Government Property, Obstruction of Justice, Perjury, Organized Crime, White Collar Crime, and Espionage. Many were of great complexity, several done for the Watergate Special Prosecutor.

Since 1974, conducted hundreds of examinations for newspapers, corporations, law firms, attorneys in private practice and government agencies where precision and confidentiality were of special importance. Most involved charges of serious criminal acts, frequently fiscal in nature. Admitted as expert polygraph witness in PA courts.

Publications

Author of "Notable Crime Investigations", Thomas Publishing, Springfield, IL, 1987, a college textbook in criminal investigation. Focuses on investigative processes and solutions in murder, kidnapping, rape and armed robbery in New York City, Western PA, Kansas, Houston, Philadelphia, Los Angeles, Bellingham, Washington, and Sydney, Australia.

Security Instruction/Consultation

Lethal Weapons Training Act instruction for Corporate Security Staffs at General Electric, Sun Oil, Sun Ship, Franklin Mint, Matthey Bishop, Inc., and various private security companies.

Security consultant to Girard Bank, Mellon Bank, Fidelity Bank, Matthey Bishop, Inc., and Franklin Mint.

University Employment

January 1975 to August 1986 – professor, Criminal Justice Department, West Chester University, West Chester, Pennsylvania. Chairman 1982-86. Instructing undergraduate and graduate students in criminal investigation, generally. Specific courses: Major Case Investigation, Official Corruption, Organized Crime, Scientific Crime Detection, Instrumental Detection of Deception (polygraph), White Collar Crime, Municipal Police Administration, Notable Criminal Cases and the Honors Program in Criminal Justice. Lecturer on polygraph process, Dickenson Law School, Carlisle, PA.

5/94 WBA

For Record
of Hearing.

Contradictions, Inconsistencies and Changes
in
Testimony
of
Henry O'Neill, Secret Service Officer

Contradictions and Changes in Deposition Testimony

Officer O'Neill provided deposition testimony under oath to the Special Committee on June 23, 1995. A review of Officer O'Neill's deposition testimony evidences the following internal contradictions.

1. Different testimony as to the number of people O'Neill saw enter the White House Counsel's suite after it was opened by the clearing crew.

At pages 38-9, Officer O'Neill testifies that while speaking with Howard Pastor in the hallway outside the Counsel's Office he saw unidentified people in addition to Bernard Nussbaum enter the office.

Later, at pages 132-33, O'Neill testifies that he didn't see anyone other than Nussbaum enter the White House Counsel's Office.

2. Different testimony regarding the number of voices Officer O'Neill heard in the Counsel's Suite.

At page 38, Officer O'Neill testifies that he heard "voices...women's voices in" the Counsel's suite the night of July 20th.

Later, at pages 101 and 106, O'Neill testifies that he heard a single woman's "voice" coming from the Counsel Office.

3. Different testimony regarding the time that Officer O'Neill saw Patsy Thomasson in David Watkins doorway.

At page 73-79, O'Neill testifies that, after his second of three visits to the Counsel's Office the night of July 20th, he went down to the first floor of the West Wing and soon thereafter saw Patsy Thomasson in the door to Watkins office.

He testifies again, at page 102, that he saw Ms. Thomasson after his second visit to the Counsel's Office and before the office was locked.

Later, at page 163, he testifies that he saw Ms. Thomasson in the door to Watkins' office but that this was after his third,

and last, visit to the Counsel's Office.

4. Contradictory testimony as to whether Officer O'Neill saw Ms. Thomasson in the doorway of David Watkins office.

O'Neill's testimony concerning seeing Ms. Thomasson at the Watkins office doorway after his last, third visit to the Counsel's Office is contradicted by his testimony at pages 94-5. There O'Neill testified that he did not see Ms. Thomasson after locking the Counsel's Office on the evening of July 20th.

Contradictions and Changes in Deposition and Hearing Testimony

5. Different versions as to whether and under what circumstances Officer O'Neill saw Maggie Williams.

At pages 80-81, Officer O'Neill testified that he saw Maggie Williams leave the Counsel's Office carrying a 3-5 inch stack of file folders.

Later, at pages 175-6, O'Neill testified that he was confused, that he could not remember if he saw Ms. Williams leaving the Counsel's Office, that she may have been carrying a box, like a small hat box, on top of file folders.

Later in his hearing testimony Officer O'Neill described the box as a small hatbox, page 100.

Still later in his hearing testimony, Mr. O'Neill amended his earlier testimony, at page 104, saying, "Just strike the hatbox."

6. Testimony regarding whether Officer O'Neill saw or spoke with the cleaning women on his second entering of the Counsel's Suite.

O'Neill, when asked whether he saw the two cleaning women when he went to the Counsel's Office the second time on July 20th, testified at page 157-8 "I do not recall if they were there."

O'Neill then abruptly changed his testimony and stated that "Actually, I think I spoke with them, yes."

7. Testimony regardng whether Vincent Foster's office was cleaned and whether his unclassified trash bag emptied that evening.

O'Neill testifies, at pages 52-3, in response to multiple questions, that the cleaning crew he accompanied on the night of

July 20th to the Counsel's suite did in fact clean Vincent Foster's office.

Officer O'Neill repeated this testimony in his Special Committee hearing testimony at page 49, testifying that the cleaning crew did not enter Vincent Foster's office.

There is testimony by several White House employees, including Sylvia Mathews, at pages 57-61, and Bernard Nussbaum, at page 217, that a trash bag containing trash that had come from Vincent Foster's office was found in a common trash area outside the Counsel's Office.

8. Different recollections under oath regarding collection of White House Counsel's Office Suite classified burn bags.

O'Neill testified to the Committee at the hearing, at page 27 of the Hearing Transcript, that he could not recall if he collected the burn bag material from the Counsel's Suite. (O'Neill was the only person in the White House Counsel Office cleaning crew authorized to clean burn bags.)

Yet, in his deposition testimony, at pages 147-8, O'Neill testified that he was confident that he never emptied any of the burn bag material from the Counsel's Office ("I never did").

9. Contradictions in testimony as to whether Mr. Foster even had a classified burn bag.

O'Neill's deposition testimony, at page 24, was that there <u>was</u> a burn bag in Vincent Foster's office.

Yet, before the Special Committee, page 14, Officer O'Neill testified that he could not recall whether there was a burn bag in Foster's office.

10. Contradictory testimony as to whether O'Neill read newspaper reports regarding documents being taken from Mr. Foster's office.

At his deposition, O'Neill testified, at page 106, that after July 20th he read newspaper articles about documents being taken from the counsel's office, "In fact, I think by Maggie Williams, in fact."

O'Neill at first testified, at page 84, before the Special Committee testimony that he "had never read anything about anyone taking any files out of any office." Then, later, at page 121, later he testified that he had read something about the matter.

11. Officer O'Neill's Special Committee testimony and his

deposition testimony provide three versions of Evelyn Lieberman's identification of Maggie Williams.

The differences suggest that Officer O'Neill may be susceptible to suggestion or influence through information he learns subsequent to an event.

For example, at the hearing Officer O'Neill testified, at page 23, that Ms. Lieberman told him that Ms. Williams was "the First Lady's chief of staff." Officer O'Neill's deposition testimony, at page 80, was that Ms. Lieberman only introduced Ms. Williams as "Maggie Williams."

Yet at his deposition, at page 172, Officer O'Neill testified that Ms. Williams had been introduced by Ms. Lieberman as the "First Lady's secretary."

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, JULY 27, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:35 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The hearing will come to order.

[Witness sworn.]

Thank you. Mr. Spafford, do you have a statement that you would like to give to the Committee?

Mr. SPAFFORD. Yes, sir, a brief statement.

SWORN TESTIMONY OF MICHAEL L. SPAFFORD ATTORNEY, SWIDLER & BERLIN

Mr. SPAFFORD. Good morning. My name is Michael Spafford——

The CHAIRMAN. Michael, why don't you pull that microphone up closer to you?

Mr. SPAFFORD. My name is Michael Spafford; I'm an attorney practicing in Washington, DC. From time to time I have assisted my partner, Jim Hamilton, in representing the family of Vincent Foster. I performed services for the family on July 22, 1993, and I am prepared to assist this Committee by testifying about certain events that occurred that day.

I trust this Committee recognizes that all my actions in this regard were in the context of representing clients under the District of Columbia code of professional responsibility, clients, I must say, who have suffered grievously. My sole charge was to assist them. Because of my role, there are some certain privileged matters about which I cannot testify.

In an attempt to be helpful to this Committee, privilege has not been asserted as to certain documents I prepared on July 22nd and 23rd which I am prepared to discuss today and have provided to the Committee. However, I am constrained by my responsibilities to my clients and the ethics of my profession from testifying about other privileged matters.

I'd like to thank the Committee for their cooperation in scheduling this hearing, my appearance today. With this said, Mr. Chairman, I'm here to be as helpful as I can to the Committee.

The CHAIRMAN. We want to thank you, Mr. Spafford, for your cooperation. We certainly recognize the pressures that you have and the responsibilities that are placed upon you and the limitations that are equally placed upon you.

Senator Frist.

OPENING COMMENTS OF SENATOR BILL FRIST

Senator FRIST. Thank you, Mr. Chairman.

Mr. Spafford, welcome this morning to the hearing. As we all know, the White House has taken the position that Mr. Foster's torn-up, handwritten note was first discovered on Monday, July 26, 1993.

I'd like to ask a few questions this morning because you did represent the Foster family after Mr. Foster's tragic death and you attended the document review in Mr. Foster's office on Thursday, July 22, 1993.

Could you take just a minute, Mr. Spafford, and tell us about your profession, education and background?

Mr. SPAFFORD. I attended the State University of New York at Binghamton, where I graduated with a bachelor of arts in philosophy and history in 1980. I then attended the law school at Duke University in North Carolina, where I graduated in 1983. Upon graduation, I then accepted a job with the New York law firm of Olwine, Connelly, Chase, O'Donnell & Weyher, where I worked in New York City for about 8 years. Then, approximately 4 years ago, I moved to Washington, DC, and I currently am a partner with the law firm of Swidler & Berlin.

Senator FRIST. As an attorney with the commercial litigation practice, do you regard yourself as proficient in the area of document production and document review?

Mr. SPAFFORD. Yes, sir.

Senator FRIST. Mr. Spafford, did you have any involvement in the Clinton Presidential campaign?

Mr. SPAFFORD. No, sir.

Senator FRIST. Did you have any involvement with the Clinton transition team?

Mr. SPAFFORD. No, sir.

Senator FRIST. Did you ever apply for or otherwise get considered for an office or position with the Clinton Administration?

Mr. SPAFFORD. No, I did not.

Senator FRIST. Are you a registered voter?

Mr. SPAFFORD. Yes, sir.

Senator FRIST. From your sworn deposition on July 11, you testified that you're a Democrat; is that correct?

Mr. SPAFFORD. That's correct.

Senator FRIST. Have you personally worked for the Foster family prior to July 21, 1993?

Mr. SPAFFORD. Me personally—or—I had not, sir.

Senator FRIST. So it appears to me from what we've just reviewed that today you don't have an axe to grind with anybody and that you're neutral overall in this case?

Mr. SPAFFORD. Yes, sir.

Senator FRIST. Let's go back to July 22nd when you were in Vincent Foster's office for a document review that was being conducted and being led by Bernard Nussbaum, White House Counsel. I have displayed on the monitor a diagram—not a complete diagram because there is other furniture in the room, but a diagram that will help us in terms of positioning people who were at that meeting.

In that diagram you see illustrated by D a desk, Vincent Foster's desk, S, across the room from there, is a sofa. If one is sitting at Mr. Foster's desk, to the right, illustrated by the letter C, is a credenza. Over on the right of that—the arrow is pointing to the left. On the right side of the one credenza and to the left of the desk when one is sitting at the desk is another credenza. Is that generally correct for the location of the furniture, recognizing that there is other furniture in the room?

Mr. SPAFFORD. That's correct, Senator.

Senator FRIST. Could you tell us where Mr. Nussbaum was sitting?

Mr. SPAFFORD. He was sitting or standing behind the desk.

Senator FRIST. Behind the desk, approximately where the arrow is pointing?

Mr. SPAFFORD. That's correct.

Senator FRIST. You were sitting at the credenza at the bottom of the diagram?

Mr. SPAFFORD. I was actually standing. There was no chair there.

Senator FRIST. You were standing at approximately the position where your name is placed on that chart, and you were using the credenza to write your handwritten notes on?

Mr. SPAFFORD. That's correct.

Senator FRIST. Were Mr. Sloan and Mr. Neuwirth, the other White House attorneys, sitting at the credenza or sitting behind Mr. Nussbaum?

Mr. SPAFFORD. They were standing behind Mr. Nussbaum, against the wall directly behind the desk.

Senator FRIST. With him sitting at the desk, they were standing behind him?

Mr. SPAFFORD. That's correct.

Senator FRIST. Also present were the FBI, Department of Justice and Park Police, various representatives. Where were they, roughly, in the room during the document review?

Mr. SPAFFORD. Mr. Margolis and, I believe, Mr. Adams from the Justice Department were seated in two chairs directly in front of the desk. Two gentlemen were seated on the sofa, then there were chairs that were lined up along the right side in front of me going down through the hallway toward the door.

Senator SARBANES. Are the arrows supposed to be following the testimony of Mr. Spafford or what?

Mr. SPAFFORD. I'm probably going a little too fast, Senator.

Senator FRIST. We can come back. The general layout, I believe, would—I don't think we need to go through the locations of each of the individuals now, but is it correct that the FBI, the Department of Justice and the Park Police were out in front of the desk in the area, the big blank area between the desk and the sofa?

Mr. SPAFFORD. That's correct.

Senator FRIST. I think that we—instead of trying to put each individual in there, if we get a rough layout we can come back to it. One important point, I guess, would be where is the briefcase, Mr. Foster's briefcase, because we will be coming back to the briefcase?

Mr. SPAFFORD. It was behind the desk against the wall, right about where that dot is.

Senator FRIST. Let's leave a dot where the briefcase was because we will be coming back to that.

Senator SARBANES. What does that FBI thing represent?

Senator FRIST. The FBI is where the FBI, the Department of Justice and Park Police in that part of the room were sitting; is that correct?

Mr. SPAFFORD. In that general area. There were two gentlemen on the sofa. They were generally seated in front of the desk.

Senator SARBANES. They're not in front of the desk.

Senator FRIST. This gives just a rough idea. Again, we can come back to this rough idea of the layout of the room because I will be coming back to the briefcase. Let's move on.

Can you tell us how the document review was conducted?

Mr. SPAFFORD. At the beginning of the review Mr. Nussbaum summarized his concerns regarding the documents that were in Mr. Foster's office. He had concerns, generally, that many of those documents were privileged, either by attorney-client privilege, work product privilege or executive privilege.

He also had concerns that if he showed any of those documents to the investigators, that it could be construed as a waiver. This was the introductory comments that Mr. Nussbaum made to open up the meeting. At the same time, he understood that the investigators had a legitimate desire or need to investigate the cause of the death so he proposed a compromise. He said I view this as a search for a suicide note. What I propose is that I review the documents and generally describe to you the contents of those documents, and then we'll see what comes up and we'll take it on an issue-by-issue, document-by-document basis.

Mr. Margolis, who took the lead for the investigators, then responded, saying that generally he understood Mr. Nussbaum's concerns. However, he had a responsibility as an investigator to follow through and do his job, investigate this matter. He wanted to make sure that they had seen what was relevant to their investigation.

There was a general discussion along those lines, and it was agreed that they would proceed along the lines that Mr. Nussbaum had proposed and see what came up.

Senator FRIST. Documents throughout the office were reviewed?

Mr. SPAFFORD. That's correct.

Senator FRIST. In your sworn testimony you outlined the documents were generally put into three separate piles. Could you review that with us?

Mr. SPAFFORD. Mr. Nussbaum started with the top of the desk. There was an out-box with several documents stacked in the box. As he proceeded to describe generally the documents—the descriptions are reflected in my notes that you have—questions would come up.

For example, there was a map of Metropolitan Washington, and Mr. Margolis asked if Fort Marcy was circled. Mr. Nussbaum replied that it was not. So as questions came up, what happened was that the documents were separated into three separate piles. One pile represented personal documents of Mr. Foster, such as his credit union slips, things like that. Another pile represented documents of interest to the pros—or to the investigators that they identified. One of them being the map of Metropolitan Washington.

A third pile represented documents of no apparent interest. Gradually, as the search continued and Mr. Nussbaum described the documents, there was a dialog, a questioning by the investigators, response, and then the documents were separated into three distinct piles.

Senator FRIST. Who actually looked at the documents? Did the FBI, Department of Justice or Park Police? Were they looking at the documents or was it just Mr. Nussbaum?

Mr. SPAFFORD. Mr. Nussbaum.

Senator FRIST. Is it correct to say that none of the investigators were allowed to look at the documents at the time of this review?

Mr. SPAFFORD. That's correct.

Senator FRIST. Mr. Spafford, you actively took notes during the course of the document review, didn't you?

Mr. SPAFFORD. That's correct.

Senator FRIST. Is it fair to say that you made a very conscious decision to take extremely careful notes throughout?

Mr. SPAFFORD. Necessary.

Senator FRIST. In those notes did you capture as accurately as possible, as accurately as you could, the words of Mr. Nussbaum, what he actually said?

Mr. SPAFFORD. To the best of my ability, yes. I would just add, Senator, that I did also do a contemporaneous memo at that time, upon returning to the office. The memorandum has some additional recollections, if you will, of what happened that day.

Senator FRIST. But during your note-keeping and note-taking, your actual notes as much as possible were to capture those actual words?

Mr. SPAFFORD. That's correct.

Senator FRIST. Let me turn to an event that occurred during the document review. At one point, as the review was being conducted by Mr. Nussbaum, an FBI agent in the back of the room stood up; an agent by the name of Mr. Salter stood up.

What was Mr. Sloan's response to this FBI agent standing up?

Mr. SPAFFORD. The FBI agent was seated at the sofa, and I remember him standing up, and it looked like he was trying to look at the documents. Mr. Sloan confronted him and asked are you trying to look at the documents. Mr. Nussbaum quickly intervened and rebuked Mr. Sloan and said that's not why we're here. We're here to cooperate. The search continued.

Senator FRIST. Did Mr. Sloan's comment, this rebuke, appear to you that he may have been trying a little bit too hard to carry out his job?

Mr. SPAFFORD. I think that's a fair characterization.

Senator FRIST. Let me go back and ask was Mr. Sloan just kidding, or was this a serious rebuke?

Mr. SPAFFORD. Mr. Sloan was serious when he made the comment.

Senator FRIST. Let's shift again to another point with regard to the FBI and the trash in the office. Did the FBI ask during the review to look at the trash in Mr. Foster's office?

Mr. SPAFFORD. I don't recall whether they asked or Mr. Nussbaum volunteered it, but my notes reflect that there was a bag that was represented to be the trash, and Mr. Nussbaum went through the contents and generally described those contents.

Senator FRIST. Was this trash from the trash can or from the burn bag, or could you review which trash that was?

Mr. SPAFFORD. My notes revealed that there were two different bags. One was identified as the trash. A separate bag was identified as the burn bag.

Senator FRIST. But Mr. Nussbaum would not let the FBI see the documents in the trash on the grounds that it was privileged; is that correct?

Mr. SPAFFORD. He didn't say what the grounds were, but generally he did not let them review the actual documents. He just described what they were.

Senator FRIST. Did Mr. Margolis, the Justice Department attorney, argue that the trash cannot be privileged as it was abandoned and thrown out?

Mr. SPAFFORD. I'm not sure if it was Mr. Margolis or another one of the investigators, but at one point they raised that point, yes.

Senator FRIST. But Mr. Nussbaum did not agree with that argument?

Mr. SPAFFORD. That's correct.

Senator FRIST. Let me refer back to the diagram. As you've said, the briefcase is where the black dot is, roughly, in the room. That is to the right and behind Mr. Nussbaum during the document review. When Mr. Nussbaum reviewed the contents of the briefcase—I understand he went through the desk and went through the credenzas, but when he came to the briefcase, did he actually pick up the briefcase?

Mr. SPAFFORD. Yes. The briefcase was behind him. He picked it up, brought it up to the desk. The briefcase was stuffed full of files or documents. He then picked the documents up out of the briefcase, stacked them on the desk, returned the briefcase behind him against the wall, and then proceeded to review the documents that he had taken out of the briefcase.

Senator FRIST. Was he sitting at the time?

Mr. SPAFFORD. As I remember it, he started with the desk and then he went to the drawer on his right. He was sitting at that time, when he was reviewing that drawer. Then he reached back and picked up the briefcase, and he stood up to take the documents out of the briefcase and put them on the desk.

The CHAIRMAN. Who did this?

Mr. SPAFFORD. Mr. Nussbaum.

The CHAIRMAN. OK.

Senator FRIST. In fact, you have a briefcase with you, just your briefcase?

Mr. SPAFFORD. Yes, Senator.

Senator FRIST. This is not Mr. Foster's briefcase, but if you have a briefcase, could you just set it behind you and to the best of your recollection walk us through what he did?

Mr. SPAFFORD. As I said, he started first with the desk and then he went to the right drawer; and he was sitting when he started going through the documents from the right drawer.

Then he reached back and picked up the briefcase like this, and the briefcase was stuffed full of documents. So he picked the documents up—and there may have been more than one time—stacked them, and then put the briefcase back behind him like this. He then proceeded to go through the documents individually, describing them.

The CHAIRMAN. He was describing these documents to the FBI, the DOJ and the police investigators?

Mr. SPAFFORD. That's correct.

Senator FRIST. Did you observe after he removed the documents, the large number of documents in the briefcase, whether he looked into the briefcase to see whether or not there was anything else there?

Mr. SPAFFORD. I don't recall whether he looked in the briefcase or not. I recall recently reading an article in which Mr. Markland said he asked a question about whether or not he had gotten everything from the briefcase. That struck me as being consistent. I remember at some point a question came up, did you get everything, to which Mr. Nussbaum replied I removed all the files. Then he proceeded to go through the individual documents.

Senator FRIST. So when he finished pulling the documents out, putting them on the desk and putting the briefcase behind, somewhere in there he made the statement that the briefcase is empty or something to that effect?

Mr. SPAFFORD. I don't—the words that I recall is I have removed all the files from the briefcase. That's generally what I recall.

Senator FRIST. Now, after the review—and we've gone through this entire process—who was left in Mr. Foster's office after the review had been completed?

Mr. SPAFFORD. When the review was completed, I made arrangements with Mr. Margolis to talk to them downstairs, the investigators, because it was agreed that I would take with me Mr. Foster's personal effects. So the investigators went downstairs, and I was going to meet them. At that point in time the only people that were remaining in the office were Mr. Nussbaum, Mr. Sloan and myself.

Senator FRIST. At this time the meeting, the formal aspects of the meeting had been over, and you were in the process of gathering papers together. Throughout this whole process you had been taking your own notes of the review.

At this point in time, had you placed your own handwritten notes away?

Mr. SPAFFORD. Yes, I did, Senator, and I was trying to gather the personal effects together.

Senator FRIST. Had you put your notes in your briefcase?

Mr. SPAFFORD. That's correct.

Senator FRIST. So at that point in time you were no longer taking notes of the meeting?

Mr. SPAFFORD. That's correct.

Senator FRIST. At this point in time, did Mr. Sloan approach Mr. Nussbaum about the briefcase?

Mr. SPAFFORD. At some point in time I was talking to Mr. Nussbaum, and at some point in time Mr. Sloan had the briefcase in his hand. So I didn't see him pick it up. He made the comment at that point in time that there appeared to be scraps in the bottom of the briefcase.

The CHAIRMAN. Was he standing?

Mr. SPAFFORD. Yes, he was.

Senator FRIST. Are you certain that Mr. Sloan during this period told Mr. Nussbaum that there were scraps of paper at the bottom of the briefcase?

Mr. SPAFFORD. I don't recall the exact words, but words to that effect.

Senator FRIST. Did Mr. Sloan actually have the briefcase in his hands when he stated to Mr. Nussbaum that there were scraps of paper in the bottom of the briefcase?

Mr. SPAFFORD. Yes, sir.

Senator FRIST. Again, I know we're using your briefcase, which isn't the original briefcase, but could you use your briefcase and to the best of your recollection show us how Mr. Sloan showed Mr. Nussbaum the briefcase?

Mr. SPAFFORD. He was standing, and he had it by the handles. He had it open like this, and he was looking into the briefcase.

Senator FRIST. So he had the handles, opening it up, and he himself was looking into the briefcase. Did he show the scraps of paper to Mr. Nussbaum?

Mr. SPAFFORD. I did not see the scraps of paper. He did not take them out of the briefcase or show them to anyone.

Senator FRIST. What did Mr. Nussbaum say in response to Mr. Sloan's statement and his demonstration that there were scraps of paper in the bottom of the briefcase?

Mr. SPAFFORD. Mr. Nussbaum was sitting on the couch or the sofa at the time, and his comment was something to the effect that we will get to all of that later; we have to look through the materials, and we will look through that later.

Senator FRIST. Were you left with the impression of that statement that, indeed, these scraps would be looked at later?

Mr. SPAFFORD. That's correct.

Senator FRIST. Now, when Mr. Sloan stated that there were scraps of paper there, was Mr. Nussbaum surprised? What was his reaction?

Mr. SPAFFORD. Mr. Nussbaum, as near as I can recall, did not have a reaction. It was an off-the-cuff remark by Mr. Sloan to which I attached very little significance at the time, and it appeared that Mr. Nussbaum attached very little significance to it as well. We then proceeded to talk about the fact that he was going to go through the office, and if he found any personal effects, other personal effects of Mr. Foster, he would have those delivered to my office.

Senator FRIST. Say once again what happened to the briefcase after the statement was made and the exchange between Mr. Sloan and Mr. Nussbaum took place.

Mr. SPAFFORD. I'm not certain what Mr. Sloan did with the briefcase because I turned my attention to Mr. Nussbaum and we continued our conversation. So I would be making an assumption. I don't know.

Senator FRIST. During this period did you know that investigators were still on the first floor of the White House?

Mr. SPAFFORD. Yes, sir.

Senator FRIST. You made the statement that you knew that Mr. Margolis was waiting for you at that time?

Mr. SPAFFORD. That's correct.

Senator FRIST. Let me go back to your handwritten notes as we finish up here. Why is it that the exchange that we just went through between Mr. Sloan and Mr. Nussbaum relating to the scraps of paper at the bottom of the briefcase, why is it that this whole exchange is not reflected in your very carefully written and recorded handwritten notes?

Mr. SPAFFORD. At that point in time I had put my notes into my briefcase so I could gather up the personal effects of Mr. Foster and put them into a box. So I was not taking notes when that conversation took place.

Senator FRIST. At that time, did you attach any significance to Mr. Sloan's remark about the scraps in the bottom of the briefcase?

Mr. SPAFFORD. No, sir.

Senator FRIST. When did you first attach significance to that exchange?

Mr. SPAFFORD. The following week I became aware of the existence of the note for the first time, and that it was in the bottom of the briefcase, and that it was in pieces. I made the connection then. I don't recall the exact date, but it was that following week.

Senator FRIST. Do you recall when you first described to someone else what you heard Mr. Sloan say to Mr. Nussbaum?

Mr. SPAFFORD. I had a privileged conversation at that time.

Senator FRIST. Do you know when that time was, or is that sometime the next week?

Mr. SPAFFORD. It was sometime the week of the 26th.

Senator FRIST. In closing, we've read in press reports that there may have been—and this is in press reports—a file in Mr. Foster's office entitled Whitewater. Do you recall Mr. Nussbaum saying the word Whitewater or here is a Whitewater file or here are Whitewater documents at any time during this July 22nd document review?

Mr. SPAFFORD. No, Senator.

Senator FRIST. If Mr. Nussbaum had said Whitewater, would you have likely written that down in your contemporaneous notes?

Mr. SPAFFORD. I was attempting to take careful and accurate notes, so it is probable that I would have.

Senator FRIST. Is Whitewater written down in any of your notes?

Mr. SPAFFORD. It is not.

Senator FRIST. Thank you, Mr. Chairman. At this point, Mr. Chairman, I'd like to yield the remainder of my time to Mr. Kip Johnson if I could.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. Thank you. As a point of clarity, Mr. Spafford, you testified in response to Senator Frist's questions that you made the

connection sometime in the following week between what we now know to be Mr. Foster's handwritten note and the torn-up scraps of paper that you've been discussing. You also testified that sometime during that week you had a privileged conversation about what you had heard Mr. Sloan say to Mr. Nussbaum. Have I got that right so far?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. Those two things occurred on the same day, didn't they? The connection that you made and the conversation that you had?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. Do you happen to have your memorandum of July 23, 1993 in front of you?

Mr. SPAFFORD. If you give me a minute, I'll get it.

Mr. JOHNSON. I'd like to ask you just a couple of quick questions about it. First, the date. It's dated July 23, 1993. Is that the day you first prepared this memorandum?

Mr. SPAFFORD. No, sir. I first prepared it upon returning to my office from the White House on the 22nd. It's dated the 23rd because I reviewed it the next day to clean up some typos, and our computer automatically dates the document.

Mr. JOHNSON. So it is, in fact, a contemporaneous memorandum made on the date of the review?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. In the second full paragraph on the first page of that memorandum, the first sentence says, "According to Steve Neuwirth, Mr. Nussbaum entered the office Tuesday night sometime after 10:00 p.m. and made a cursory review of the office looking for a suicide note." Do you see that sentence?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. You remember Mr. Neuwirth saying that?

Mr. SPAFFORD. Yes, I do.

Mr. JOHNSON. At the time that Mr. Neuwirth said that, or at any other time, did he tell you that Maggie Williams and Patsy Thomasson had also been in Mr. Foster's office on the evening of July 20, 1993?

Mr. SPAFFORD. No, sir.

Mr. JOHNSON. Did anybody tell you that on July 22, 1993?

Mr. SPAFFORD. No, sir.

Mr. JOHNSON. If I could, please, ask you to turn to page 3, the bottom of page 3 and the carryover paragraph to the top of page 4, I'll also read this to you just for purposes of clarity. It says, "In discussion with Mr. Margolis, he made it clear that the Government would get a Grand Jury subpoena for materials if necessary but suggested that cooperation might be preferable." Do you see that statement?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. That's a statement that Mr. Margolis made to you; is it not?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. He's talking at this time not about all of the documents in Mr. Foster's office but about the personal documents that you were removing on that day?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. You've also stated in a footnote at the bottom of that same page, page 4, "He felt that he had clear legal grounds for a subpoena since it was a crime on Federal property and, if foul play were involved, he would have jurisdiction to investigate as a possible assassination."

Do you remember Mr. Margolis saying that to you?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. You didn't question at that time whether or not such a Grand Jury subpoena could be obtained; is that correct?

Mr. SPAFFORD. No, I did not.

Mr. JOHNSON. Referring to your handwritten notes, which are appended to the back of the typewritten memorandum that we've just been discussing, Mr. Spafford, if you'll turn to page 5, you may recall that Senator Frist asked you whether or not the FBI requested to look at the trash. I'm reading an entry that's the next-to-last entry which appears to me to say, "FBI: Can they look through trash?"

Does that refresh your recollection about whether or not the FBI requested to look at the trash?

Mr. SPAFFORD. Yes, it does, and my notes are accurate. They did ask that question.

Mr. JOHNSON. It appears to you that they did ask that question?

Mr. SPAFFORD. Yes.

Mr. JOHNSON. Mr. Spafford, we have learned through previous testimony that later in the afternoon, after the search on the 22nd, that Mr. Nussbaum and Maggie Williams were in Mr. Foster's office and assembled documents that ultimately made their way to the residence in the White House.

My question to you is just one of chronology. If that occurred later in the afternoon of the 22nd, I'm correct, am I not, that that would have been after you heard Mr. Sloan tell Mr. Nussbaum that there were torn-up scraps of paper in the briefcase?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. OK. Mr. Chairman, I have nothing further.

The CHAIRMAN. I only have a few moments to straighten something out. This review or search of Mr. Foster's office was conducted essentially by Mr. Nussbaum and his aid, Mr. Sloan; is that correct?

Mr. SPAFFORD. It was primarily Mr. Nussbaum who reviewed the documents.

The CHAIRMAN. Right. Because he just told the FBI, the DOJ and the Park Police I have such-and-such, but this pertains to the family; such-and-such, but this is privileged White House material; such-and-such, and he decided what category these documents fell into; is that correct?

Mr. SPAFFORD. Senator, as he described the documents, Mr. Margolis or some of the other agents would ask questions about them and, actually, if you look through my notes, I have arrows or stars next to the documents that they focused on. They would then say—Mr. Margolis, primarily—those documents would be of interest to us, they should go into the middle pile.

The CHAIRMAN. Now, was this search supposed to represent the totality of all of the documents that were in the office? Let me explain why I have some trouble. Later on we learn that Mr. Nuss-

baum and Maggie Williams come back into the office, I think later that afternoon, and conduct another review of these documents and find, apparently, a document in the credenza that said taxes. Was that document—related to 1992 taxes—discovered during this review?

Mr. SPAFFORD. My notes do not—of the documents described from the credenzas—do not indicate that description. My notes indicate that one of the credenzas Mr. Nussbaum went through, it had those green file folders with the tabs on top. He went through those and he said that these are generally General Counsel issues.

The CHAIRMAN. You see, this raises concerns. What kind of review is this when Mr. Nussbaum is the reviewer and basically the arbiter and describes the event and then we have this file, the 1992 taxes, which we understand is removed later and there's not even a description of this file; nobody's made aware of it? So it raises questions: How many times did this take place?

Obviously, I'm going to get back to the issue of the briefcase. You stated Mr. Sloan was standing, looked into the briefcase, said to Mr. Nussbaum there are scraps of paper here in this briefcase, and Mr. Nussbaum replied we'll look at that later?

Mr. SPAFFORD. His reply was a general comment: We have to look through the office later, and we will do that.

The CHAIRMAN. Oh, we'll do that later. All right. I have no further questions, but this is troubling. I was not aware of the manner in which the scraps of paper were found, I have not read the deposition. I don't believe I've read any depositions because I don't want to second guess witnesses in their depositions, and I was not aware of the manner in which the torn pieces of paper which turn out to be the note were described. It deeply troubles me that it then doesn't turn up for 4 days.

Senator Sarbanes, I might say I went out and called the cloak room. We have, starting somewhere between 10 a.m. and 10:15, the possibility of seven votes and final passage, so that would necessitate a recess of some duration, probably an hour and a half or so. So I make that comment.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Spafford, good morning.

Mr. SPAFFORD. Good morning, sir.

Senator SARBANES. Actually, given what the Chairman just said, you may not have to plead for a time out later because you'll get one now, unlike some of our other witnesses earlier this week.

Let me say as a preliminary that I didn't quite know how it mattered how you're registered party-wise, but I was relieved to hear that when Senator Frist heard that you were registered as a Democrat, he then said he didn't think you had an axe to grind. So we're proceeding on a reasonable basis.

Now, a vote has started—I'll do part of my questioning and then we'll come back and pick up the rest. I want to address the accuracy of this diagram that we have here, this big yellow blob that's sitting out there in the middle of the office. Were these people sitting or standing?

Mr. SPAFFORD. If I could take a minute I could describe to you exactly where they were. Mr. Margolis and Mr. Adams were sitting in chairs directly in front of the desk.

Senator SARBANES. So they're not within the blob?

Mr. SPAFFORD. No, Mr. Adams is about where that arrow is and Mr. Margolis is on the side closest to me.

Senator SARBANES. Back toward—right there in front? Back?

Mr. SPAFFORD. Back toward the center. Right across from Mr. Nussbaum.

Senator SARBANES. I think we should just wipe out the blob because obviously—there obviously—were others outside of the blob?

Mr. SPAFFORD. There were two gentlemen that were sitting on the sofa. I believe Mr. Markland was one of them.

Senator SARBANES. That's further away from the blob, yes?

Mr. SPAFFORD. That's correct. Then, just to the right of the lower part of the blob, near me, there were chairs lined up down the hallway. So just behind Mr. Margolis and then behind that and going down the hallway there were gentlemen——

Senator SARBANES. I ask whoever's doing the—what do we call people who do these, the interior designer. I think we just ought to eliminate the line there that represents around the blob since these people are outside the blob. Can we take that line out to get it more accurate? No, I don't mind the dots that were there because that's where the people were.

Mr. SPAFFORD. The suspense is killing me here, Senator.

Senator SARBANES. I want to get the line out. That's it. OK. Now, I don't mind; we can put FBI, DOJ and Park Police back if you want to. OK. But Margolis and Adams were right up at the desk sitting in chairs, directly in front of the desk?

Mr. SPAFFORD. That's correct.

Senator SARBANES. Were they asking most of the questions as this proceeded?

Mr. SPAFFORD. Mr. Margolis was.

Senator SARBANES. Mr. Nussbaum is saying here is the file, this is what it's about, and then they would respond to that? Is that the idea?

Mr. SPAFFORD. That's correct. They asked questions in response to his descriptions.

Senator SARBANES. Now, you say at the outset Mr. Nussbaum outlined the procedure that was going to be followed?

Mr. SPAFFORD. That's correct.

Senator SARBANES. Did that strike you as a reasonable procedure?

Mr. SPAFFORD. Yes, Senator. I thought there were competing interests here. He had concerns about the privilege, and he was trying to balance that against the need of the investigators to conduct their investigation.

Senator SARBANES. In fact, you yourself would have a concern since you had some interest in the privacy rights of the Foster family and papers; is that correct?

Mr. SPAFFORD. Yes, sir, that is correct.

Senator SARBANES. You would have been concerned had those—what were identified as Foster private files—been given right on the spot to the investigators; would you not?

Mr. SPAFFORD. Yes, sir, and that's actually something I discussed with Mr. Margolis at the time, and said that I wanted to look at these documents, these personal documents, and find out if there are any issues that we needed to discuss with him ahead of time.

Senator SARBANES. You said that in your memo, as I understand it. You said that you wanted to take them back and review them, and you did that, I take it, with Mr. Hamilton on the subsequent day and then you got back in touch with Mr. Margolis in terms of their access to those documents; is that correct?

Mr. SPAFFORD. Yes, sir.

Senator SARBANES. But at the time when this procedure was being followed in the office, given your concerns over the Foster personal documents, it was represented in your mind as an appropriate balance between the interest of the law enforcement people and your concern about the privacy?

Mr. SPAFFORD. That's correct, Senator.

Senator SARBANES. I take it you saw it also as a proper balance with respect to other documents about which I gather Mr. Nussbaum had indicated he had executive privilege concerns or attorney-client concerns?

Mr. SPAFFORD. That's correct.

Senator SARBANES. I've just been handed a card and, since I'm the only one left, it's clear that if I don't leave soon I'm going to miss this vote. So I think what I'll do now is put this Committee into recess. As Senator D'Amato indicated, there are a string of consecutive votes, and we will return at the conclusion of those votes, but it may be as much as an hour from now.

Mr. SPAFFORD. I'm here at your convenience, sir.

Senator SARBANES. The Committee stands in recess.

[Recess.]

The CHAIRMAN. We apologize for the long delay, but the interruption was necessary because of some votes and Floor business. When we were interrupted, Senator Sarbanes was just beginning his questioning of Mr. Spafford.

We thank you, Mr. Spafford, for your patience, and I ask that the full allotment of time be given. We start from the beginning with Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman. Mr. Spafford, I hope we'll be able to go straight through with you now and complete it, although we don't know what's going to come up on the Floor.

The CHAIRMAN. I believe that we'll be fine until at least 4:30 or 5 p.m.

Senator SARBANES. OK. Good. I just had a few more questions I wanted to put to you, and then I'm going to yield the balance of my time to Mr. Ben-Veniste.

How long did this process take place in Vincent Foster's office, when the files were reviewed and then placed in piles and so forth?

Mr. SPAFFORD. My memo reflects that the search started about 1:15, and I arrived back at my office around 3:30, so I would say approximately 2 hours.

Senator SARBANES. Did you observe what state Mr. Nussbaum was in either during or after this process, just physically and emotionally?

Mr. SPAFFORD. Mr. Nussbaum looked very tired, exhausted. At one point he indicated to me that he was extremely distraught over the death of a close associate and a friend.

Senator SARBANES. Now, what was it that Sloan said to Nussbaum, as you recall, about the scraps of paper?

Mr. SPAFFORD. I don't recall the exact words, but the gist of it was there are scraps of paper in the bottom of the briefcase.

Senator SARBANES. Did Sloan say that in terms of having really discovered something or making a matter-of-fact comment or what?

Mr. SPAFFORD. It was more of a matter-of-fact comment.

Senator SARBANES. Is that how you took it at the time?

Mr. SPAFFORD. Yes, sir.

Senator SARBANES. How did Mr. Nussbaum seem to take it?

Mr. SPAFFORD. He appeared to take it in the same way.

Senator SARBANES. Where was he at the time that was said to him?

Mr. SPAFFORD. I believe he was sitting on the sofa, either on the sofa or in a chair, but he was in front of the desk sitting down.

Senator SARBANES. So he'd come out from behind the desk, sat down; the process was over with. He had indicated to you, I guess, his state of mind, and had demonstrated his exhaustion; is that right?

Mr. SPAFFORD. Yes, it was apparent to me that he was very tired.

Senator SARBANES. Now, you did not attach a lot of significance to Sloan's statement, I take it?

Mr. SPAFFORD. No, I didn't, Senator. It was an off-the-cuff, matter-of-fact remark that I did not attach any significance to at the time.

Senator SARBANES. Now, you said earlier this morning in response to questions, you didn't note it down because you had put away your pen and pencil. But, I take it, if you had thought it was significant when you did your memo, you would have incorporated it into your memo afterwards, would you not?

Mr. SPAFFORD. That's correct, Senator.

Senator SARBANES. Regarding the fact that you had put your pen and pencil away, if you thought it was important and it happened at the end, you would have later, then, when you went back to the office, included it in your memo?

Mr. SPAFFORD. That's correct. In fact, my memo includes some conversations I had with Mr. Margolis after the search was concluded, when I met him downstairs. So, if it was significant, I would have included it in the memo.

Senator SARBANES. OK. Mr. Ben-Veniste.

Mr. BEN-VENISTE. In fact, I think it might be a good idea, Mr. Chairman, if we were to mark as Hearing Exhibits 1 and 2 Mr. Spafford's handwritten notes and his typed memorandum.

The CHAIRMAN. If they haven't been marked, they should be; we will accept them as submitted. I mean, I think we have them in the depositions, but they'll be part of the hearing record.

Mr. BEN-VENISTE. Actually, Mr. Chairman, they weren't made a part of the deposition.

The CHAIRMAN. OK.

Mr. BEN-VENISTE. So then the handwritten notes will be Spafford Exhibit 1, and the typed memorandum which is dated July 23, 1993, would be Spafford Exhibit 2.

Now, you indicated that Mr. Sloan's comment meant little to you at the time and, indeed, as Senator Sarbanes has brought out, had you thought it was important you would have incorporated it into your typed memorandum of the events you witnessed; correct?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Now, the implications of what you had witnessed, however, became clearer to you the following week when it was revealed that these scraps of paper really constituted some writing of Mr. Foster that expressed his concerns at a point very close to his death; is that correct?

Mr. SPAFFORD. That's basically correct. I didn't see the scraps, so I don't know if they were at that time the note. But when I became aware of the note and the fact that it was found in pieces in the bottom of the briefcase, I connected the two together.

Mr. BEN-VENISTE. The clear implication to you was that this torn-up writing of Mr. Foster's was torn up and in Mr. Foster's briefcase as of July 22, 1993?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Now, do you recall how many people were actually present in Mr. Foster's office on July 22, 1993, when you conducted the search?

Mr. SPAFFORD. I believe my memo reflects that. It shows that there was Mr. Nussbaum, Mr. Sloan, Mr. Neuwirth, Mr. Burton, myself, Mr. Margolis, Mr. Adams, Mr. Markland and another gentleman from the Park Police, two people from the FBI, a Mr. Flynn, and a Secret Service agent. So, if I counted correctly, that's 13.

Mr. BEN-VENISTE. One of the Park Police officers was a Detective Markland; do you recall that?

Mr. SPAFFORD. Yes, sir.

Mr. BEN-VENISTE. You were asked a question earlier on about whether Mr. Nussbaum had mentioned to you that he, together with Maggie Williams and Patsy Thomasson, had been in Mr. Foster's office on the evening of the 20th, and you indicated that you don't recall having been told.

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Did you know that Mr. Nussbaum had revealed that information to Detective Markland the day before, on the 21st?

Mr. SPAFFORD. No, sir, I did not.

Mr. BEN-VENISTE. In other words, the day immediately following the evening that the search for the note had occurred?

Mr. SPAFFORD. I was not aware of that.

Mr. BEN-VENISTE. There was no reason for you to be made aware of that, was there?

Mr. SPAFFORD. No, sir.

Mr. BEN-VENISTE. Now, could you describe whether you were sitting or standing during the time that Mr. Nussbaum conducted the search?

Mr. SPAFFORD. I was standing at the end of the credenza—actually, leaning on it because I was able to use it as a writing surface.

Mr. BEN-VENISTE. So you stood up for this entire period of time?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. You made notes to the best of your ability?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Would you say that you recorded every single thing that was said during that meeting?

Mr. SPAFFORD. No, sir.

Mr. BEN-VENISTE. Now, let me call your attention to page 1 of Exhibit 1, the first page of your handwritten notes. Could we put those, that page, up on our viewing screen, please? Let me call your attention to just about south of the equator on that page under the line that says "Margolis."

Mr. SPAFFORD. Yes.

Mr. BEN-VENISTE. Under the arrow; do you see it? Would you read that line?

Mr. SPAFFORD. "Documents relating to First Family [trust et cetera]."

Mr. BEN-VENISTE. What do you recall about what Mr. Nussbaum said about those documents?

Mr. SPAFFORD. My recollection is he generally described a file which contained documents relating to the First Family.

Mr. BEN-VENISTE. Did he indicate or do you recall where the files were that he was referring to at the time he referred to them?

Mr. SPAFFORD. If you look at the top there, the number 1, see "top of desk." This is where he started, at the top of the desk, and he's going through the documents that were on top of the desk.

Mr. BEN-VENISTE. Then, let me turn your attention to the sixth page of the handwritten notes. I know they aren't numbered, so if you will count six pages.

Mr. SPAFFORD. Yes, I have it.

Mr. BEN-VENISTE. I believe that page starts with the word "credenza." Could you tell us what your notes say?

Mr. SPAFFORD. This is the credenza on Mr. Nussbaum's right, and the first line refers to a file relating to it that says "matters re: First Family."

Mr. BEN-VENISTE. "Re:" means regarding?

Mr. SPAFFORD. Yes, sir.

Mr. BEN-VENISTE. So there were two distinct areas where files of a personal nature or documents of a personal nature relating to Mr. and Mrs. Clinton were identified by Mr. Nussbaum; is that your recollection?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Let me ask you whether, prior to the convocation of all 13 people together, whether you had a conversation with Mr. Nussbaum about the procedure to be employed?

Mr. SPAFFORD. Yes, sir, I did.

Mr. BEN-VENISTE. Did that take place immediately before the search?

Mr. SPAFFORD. Yes, sir.

Mr. BEN-VENISTE. Who was present?

Mr. SPAFFORD. It took place over the noon hour. Present in Mr. Nussbaum's office were Mr. Sloan, Mr. Neuwirth, Mr. Nussbaum and myself.

Mr. BEN-VENISTE. Would you relate to us what you recall as having been discussed during that conversation?

Mr. SPAFFORD. Mr. Nussbaum expressed his concerns that he wasn't sure what was in Mr. Foster's office, that Mr. Foster worked on a lot of matters, and some very important matters for the General Counsel's Office. He also expressed concerns about the privileges. He said I'm not exactly sure what he's worked on, but a lot of it has to be attorney-client, work product-related, maybe even executive privileged.

He was concerned that if he showed any of the documents to one of the investigators it may be construed as a waiver of that privilege. He also said there may be personal documents in there which may raise personal issues that would be relevant from my perspective.

Mr. BEN-VENISTE. Did he express the view with respect to the issue of the personal papers of Mr. Foster that might be in the office?

Mr. SPAFFORD. Yes, sir, Mr. Nussbaum suggested that I should take the personal papers with me and deal with the investigators directly, and I thought that was a good idea and assented in that recommendation.

Mr. BEN-VENISTE. Was that a procedure agreed to, to the best of your knowledge, by the investigators as you discussed that issue later in the day?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Go on.

Mr. SPAFFORD. Mr. Nussbaum said that he had these various concerns. He was also concerned about setting a precedent; he said he was not aware of anything like this occurring previously, and he was very conscious of the fact that his actions may set some kind of precedent.

So what he proposed to do was to balance the interest, if you will, at issue. On the one hand, the interest of protecting the privilege; on the other hand, allowing the investigators to do their jobs. He proposed a compromise. In the presence of all the investigators he would describe generally the documents and they would take it on an issue by issue, document by document basis to see what came up.

He asked for the views of Mr. Sloan and Mr. Neuwirth and myself as to whether we saw any issues or problems he should think about, and generally we all agreed that that was a good approach.

Mr. BEN-VENISTE. Let's go now to the meeting of the whole. What do you recall about what happened at the inception of the meeting once everyone got seated—or took their place, for those of you who were not accommodated in this small office with a chair?

Mr. SPAFFORD. Mr. Nussbaum opened up the meeting essentially repeating the concerns that he had voiced during the meeting that we had had earlier, saying that he was concerned about the privileges, he was concerned about waiver, and he was concerned about possibly setting a precedent here. So he viewed the search as a search for a suicide note or other evidence relating to that, and he proposed to review the office in the presence of everyone there and to generally describe each document to the investigators, and that was the proposal he had.

Mr. BEN-VENISTE. Let me interrupt you for a moment. When he described his understanding of the scope of the search, the purpose

of the search, to look for a suicide note or a related type of material, did anyone take a different view as to what the scope of the search was?

Mr. SPAFFORD. No. In fact, later, Mr. Margolis elaborated a little more on the scope saying that he felt he agreed that this—we were looking for a suicide note or other evidence of motivation, or any threats, any unusual items that may draw into question the issue of suicide. He actually, at one point, went through a litany, if you will, of the types of things that he thought were relevant. Mr. Margolis did this.

Mr. BEN-VENISTE. Do you recall what that litany was?

Mr. SPAFFORD. I don't recall it specifically, but to the best of my recollection it's generally what I've stated. If you look at my notes you will see that there are arrows and stars next to documents that he had questions about or the agents had questions about and that generally follows that general description. For example——

Mr. BEN-VENISTE. Why don't you take us through your notes and identify the areas where either Mr. Margolis or Mr. Adams or anyone from the FBI or the Park Police expressed an interest?

Mr. SPAFFORD. If you look on the first page, about the middle of the page, it says "list of telephone calls, July 20th." There are arrows there, and Mr. Margolis was interested in those documents. So that went into the pile in the middle. Remember; there were three piles, the first was personal documents, the second was documents of interest to the investigators, and the third was unrelated or other documents.

If you go further down, we're on the top of the desk; there were some editorials there. Mr. Margolis, if you look to the right there, wanted to know if any of the editorials were critical of Mr. Foster, so those documents went into the pile of interest to the investigators.

Further down, there was internal correspondence relating to official duties. Mr. Margolis asked what the substance of the correspondence was. He wanted to know if anyone said I'm going to hit you over the head, basically; if there were any threats. Mr. Nussbaum, I believe, responded no to that.

If you go further down the page, there was a folder entitled "insurance." Mr. Margolis wanted to know if there was life insurance in the folder, and Mr. Nussbaum reviewed the folder and said that there was property and casualty insurance, P and C, and motor vehicle insurance.

Mr. BEN-VENISTE. All right. Before we leave the first page, when Mr. Nussbaum identified the material that you've indicated as constituting documents relating to the First Family, did anyone express an interest in reviewing those documents?

Mr. SPAFFORD. No, sir.

Mr. BEN-VENISTE. OK. Would you please continue.

Mr. SPAFFORD. On the second page, if you look toward the bottom, there are arrows next to "name on a page." There was a piece of paper with a name on it, and I believe at this point someone asked a question as to what the name was and no one recognized the name, so that piece of paper went into the pile of interest to the investigators.

Further down, there was a map of Metropolitan Washington. I believe I referred to this earlier. Mr. Margolis asked if Fort Marcy was circled on the map, and Mr. Nussbaum opened up the map and said no. But that went into the pile of interest to the investigators as well.

You want me to go to the next page?

Mr. BEN-VENISTE. Yes, please.

Mr. SPAFFORD. In the top right drawer was a Dictaphone. Mr. Margolis asked if there was a tape in it; he wanted someone to listen to the Dictaphone very soon. Mr. Nussbaum popped the Dictaphone open and there was no tape in it. We then proceeded——

Mr. BEN-VENISTE. So that was, as we say, a moot point?

Mr. SPAFFORD. That's correct. We then proceeded—Mr. Nussbaum proceeded to the briefcase. Mr. Margolis asked a question: Did he carry the briefcase all the time? Mr. Nussbaum answered no, he used it as a file folder.

Proceeding down the documents that were in the briefcase, Mr. Margolis was interested in the May calendar, which I believe Mr. Nussbaum described as one that was printed out on a computer, that described appointments.

That appears to be the only document that they raised a question about from the briefcase.

If you look further down on that page, we're back again to the drawers on Mr. Nussbaum's right in the desk. There were phone messages there of various dates which Mr. Nussbaum read aloud. Mr. Margolis wanted to look through those to see if there were any non-office telephone calls. Those went into the pile of interest to the investigators.

Proceeding to the next page, we get to some drawers on the left-hand side of the desk. There were telephone slips from February there. To the right, you will see "please review." That was Mr. Margolis' comment. He wanted Mr. Nussbaum to review those. At some point in this is when Mr. Margolis went through his litany of what he was interested in.

Checks, a mortgage book—that could be a meeting book. I'm not sure I understand my abbreviations here. "Mtg book." Then, the Foster notebook is another one of interest that Mr. Margolis wanted to know about. He wanted to know if there was anyone in DC or any doctors listed in it. Just so it's clear, the notebook was a notebook of telephone numbers and addresses of people. It appeared to be people that Mr. Foster had worked with before, so that document actually went in the personal document pile.

If you look at the next page, there was a drawer—it says on the right; it should be the left. If you follow the sequence of the notes, you'll see that it is on the left. This is one of the drawers that had the green files in it with the tabs listing what the files were. Mr. Nussbaum looked through those and said that they were generally work-related, and Mr. Margolis wanted him to look at those files and look through them for any threats or unusual items.

We then get to the trash bag. There were a couple of things——

Senator SARBANES. When you say that you wanted him to look through them, that was, in effect, something Mr. Nussbaum would do after all of this process was completed; is that correct?

Mr. SPAFFORD. That's correct, Senator.

Senator SARBANES. So he would subsequently look through those things just to see if he could find a note or something about the state of his mental attitude; is that correct?

Mr. SPAFFORD. That's correct, Senator. That's actually something Mr. Margolis asked me to do with the personal documents that I took back to our office, and I did do that, and he asked me to call him the next day.

Mr. BEN-VENISTE. OK. I intend to get into that in some detail.

Mr. SPAFFORD. Mr. Nussbaum then reviewed the contents of the trash, just generally describing that. A couple of things here that Mr. Margolis said he was interested in are, one, a credit union slip. You'll see the question to the side, he wanted to know if it showed a balance on it and the answer was yes. "Receipts, handwritten notes re: personal," regarding some personal items. Those were of interest to Mr. Margolis.

Mr. BEN-VENISTE. Was there some discussion between Mr. Margolis and Mr. Nussbaum about the issue of privilege regarding the trash that had been discarded by Mr. Foster on the day he took his life?

Mr. SPAFFORD. Yes, there was.

Mr. BEN-VENISTE. Would you recount what you recall of that discussion?

Mr. SPAFFORD. One of the FBI agents asked if they could look through the trash and Mr. Margolis said something to the effect he's clearly waived this, this is abandonment. Mr. Nussbaum disagreed with that, but took a practical approach and said let's look through what's here and let's see if there are any issues that come up. He then proceeded to describe the contents generally along the manner in which he had been proceeding before.

Mr. BEN-VENISTE. All right. Can you continue?

Mr. SPAFFORD. The next thing that was identified of importance came down, I guess, to the bottom of the next page. There were several personal files, and at one point Mr. Margolis said that he wanted—there was a question as to whether or not we were going to have a battle with counsel over those. He didn't want him to give the files to counsel. Mr. Nussbaum turned to me and said there's Mr. Foster's and the family's counsel, why don't you talk directly with him now.

So we, at that point, had a conversation, which I believe I alluded to earlier, where Mr. Margolis asserted his jurisdiction, described basically that he felt he had the ability to subpoena these materials. I said that I thought that was not necessary, that I thought we could cooperate, but that he had to understand I had some logistical issues. One, I didn't know what was in the documents. I needed to look at them to see what issues would be raised. Two, I hadn't had a chance to talk to my client about the documents. I suggested that we continue with the search and he and I get together at the end of the meeting to talk through these logistical issues.

Mr. BEN-VENISTE. You didn't get into a discussion about whether a Grand Jury had been impaneled or whether there was a legal basis to ground a subpoena in, did you?

Mr. SPAFFORD. We did not, he did not discuss whether a Grand Jury had been impaneled, no. At some point, he enumerated why

he felt he had jurisdiction because it was a crime on Federal property, and basically what's reflected in my memo.

Mr. BEN-VENISTE. Mr. Margolis said that there was a crime?

Mr. SPAFFORD. He raised an issue as to whether it was a crime. He wasn't sure. He had made it clear during the meeting that he thought there was a suicide and all evidence pointed to that direction, but that he didn't want to jump to any conclusions and he was trying to do his job as thoroughly as possible was my impression.

Mr. BEN-VENISTE. Now, did anyone raise any issue about subpoena with you at any point again?

Mr. SPAFFORD. I'm not sure whether it was at this point or at the end, but at some point someone raised the issue of subpoena with me. It was only once, and I'm a little unclear on the timing. That was Mr. Margolis, and essentially what is reflected in my memo is what he said.

Mr. BEN-VENISTE. All right. After the 22nd, did anyone raise any issue about subpoenas?

Mr. SPAFFORD. No, they did not.

Mr. BEN-VENISTE. Would you go back to your memo and take us through the other items, if any, that were identified as being of interest?

Mr. SPAFFORD. Yes, on the next page——

Mr. BEN-VENISTE. I'm sorry. Let me interrupt you. On the top of the page with respect to matters regarding the First Family, again, was there any request to look through those papers?

Mr. SPAFFORD. No, sir.

Mr. BEN-VENISTE. Go ahead.

Mr. SPAFFORD. If you look at the next page, there is a notebook regarding property in Arkansas which actually related to some property of Mr. Foster's father in Arkansas. That raised a question with Mr. Margolis and was placed as a personal document. If you look further down, there was a comment made because there were various pictures and some obvious personal memorabilia and Mr. Margolis said that was OK to give to the family.

Mr. BEN-VENISTE. All right. Was there anything else?

Mr. SPAFFORD. Mr. Margolis, at one point, raised a question about the computer, which was to the left of the Mr. Foster's desk, and asked Mr. Nussbaum to review the computer consistent with his prior requests.

Mr. BEN-VENISTE. All right. Now, you took with you material that had been segregated as being Mr. Foster's personal files or other materials; correct?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Did there come a time when you made that material available to either the Park Police or other investigators?

Mr. SPAFFORD. Yes, sir.

Mr. BEN-VENISTE. When was that?

Mr. SPAFFORD. The box that I took on the 22nd—we received a second box on the 27th from the White House that was additional personal items as a result of Mr. Nussbaum's review. That week the Park Police, two gentlemen from the Park Police, came over and reviewed everything that was in both boxes. In addition, subsequently the Independent Counsel, Mr. Fiske, reviewed both boxes of documents.

Mr. BEN-VENISTE. That was sometime later?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. But in connection with the requests that were made to you as of the 22nd to review the material, did you make that material available?

Mr. SPAFFORD. Yes, sir, I did.

Mr. BEN-VENISTE. Was there any item in that material that the investigators wished to review that you did not allow them to review?

Mr. SPAFFORD. No, sir.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Spafford, I'm just going to touch on a couple of quick things. In your notes that you went back and had typed up right after the meeting on the 22nd, on the second page, the bottom of the second paragraph, the last two sentences, you say "no one other than Messrs. Nussbaum, Sloan, Neuwirth and Burton were allowed to inspect the documents." Is that true?

Mr. SPAFFORD. That's correct.

The CHAIRMAN. Did you find that unusual in any way? Would you have expected the Justice Department people in concert with White House Counsel to look at the documents?

Mr. SPAFFORD. Mr. Nussbaum did express concerns about the privilege and about waiver.

The CHAIRMAN. We understand that. Let me ask you this: Were you aware that there had been a previous agreement whereby the White House Counsel and the Department of Justice personnel would review the documents together, and that that agreement was not adhered to?

Mr. SPAFFORD. I was not aware of any such agreement.

The CHAIRMAN. What if you knew about that, would that change your opinion?

Mr. SPAFFORD. I think there are sensitive privilege issues here, and I understood Mr. Nussbaum's concerns and his caution, and, quite honestly, I didn't think it was out of place.

The CHAIRMAN. Now, let me try to get this both by way of your notes and your recollections. The various investigators had to rely entirely on Mr. Nussbaum's interpretation of the documents, so that if he said these were personal matters, governmental matters, or matters of no consequence, it was his interpretation that determined into which category these documents were placed; is that not true?

Mr. SPAFFORD. That's a fair characterization.

The CHAIRMAN. Would it be fair to say that if you had a thorough, comprehensive review of all of these documents—given the size of the room—and maybe you can put up the chart of the room—on one side there was a credenza, and on that credenza there were various files? You testified to that; is that correct?

Mr. SPAFFORD. I believe they were in the credenza.

The CHAIRMAN. Yes, and Mr. Nussbaum and his staff, who were looking for these various documents, looked at the files in the credenza; is that not correct?

Mr. SPAFFORD. That's correct.

The CHAIRMAN. Now, would it be fair to say that a thorough review of those would have found a folder designated "taxes" or

would you have left that in there? There are matters of State security, matters of personal interest, family interest. Don't you think it's reasonable to say that with all of these people, Mr. Nussbaum and three Associate Counsels, Mr. Sloan, Mr. Neuwirth and Mr. Burton from the Chief of Staff's Office, that you would have found this?

Mr. SPAFFORD. It's difficult to speculate about what could or could not have happened. Mr. Margolis stated that——

The CHAIRMAN. I'm not asking you to speculate. I'm asking you to determine if a thorough review would have found this. This wasn't hidden in the back.

Now, what Mr. Margolis said to the group was mentioned as significant. I think it's on page 4, he said—and you have this in quotes—"The vast majority of suicides leave behind a note." No one really suspected foul play, but as Mr. Margolis had indicated, you were advised that they were looking for this note; is that true?

Mr. SPAFFORD. They were looking for a suicide note, that's correct.

The CHAIRMAN. So you really didn't place any great significance, nor would anyone reasonably at that particular time, when Mr. Sloan said there are scraps of paper in this briefcase?

Mr. SPAFFORD. That's correct.

The CHAIRMAN. You said that he said there were scraps of paper. You said that he called Mr. Nussbaum, he stood up; right?

Mr. SPAFFORD. No, Mr. Nussbaum remained——

The CHAIRMAN. No, Mr. Sloan stood up——

Mr. SPAFFORD. Yes, he was standing.

The CHAIRMAN. —and he said tell me, Bernie——

Mr. SPAFFORD. I don't know the exact words, but the gist of it was there are scraps of paper in the bottom of the briefcase.

The CHAIRMAN. What was Bernie's reply to him?

Mr. SPAFFORD. Mr. Nussbaum was seated on the sofa, he stayed seated and he said, essentially, we'll look through all of that later.

The CHAIRMAN. We'll look through all of that later. Of course, it doesn't mean anything to you at that time because you don't know. It's 4 days later when someone supposedly kicks the briefcase, the briefcase falls open, and the scraps of paper are discovered and then put together. You learned about that through the news media, I guess, for the first time?

Mr. SPAFFORD. I learned about it the following week, that's correct.

The CHAIRMAN. Through newspaper accounts?

Mr. SPAFFORD. That's correct.

The CHAIRMAN. All right. I have no further questions.

Senator Murkowski, are you ready? I'll yield the balance of my time to Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Spafford, I want to briefly review some of the events that occurred on July 22, 1993, after the meeting involving Mr. Nussbaum, White House Counsel Attorneys Cliff Sloan and Steve Neuwirth and the Justice, FBI and Park Police investigators.

I'm perhaps going to be somewhat repetitive, but you indicated at noon that lunch was ordered and those participating were Mr. Sloan, Mr. Neuwirth, Mr. Nussbaum and yourself; is that correct?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. You worked through lunch and Mr. Nussbaum ate his lunch as well?

Mr. SPAFFORD. Yes.

Senator MURKOWSKI. Then, at 1:15 that afternoon, Mr. Nussbaum unsealed Mr. Foster's office, according to the memorandum which you wrote after you returned that day?

Mr. SPAFFORD. Yes, sir, there was yellow tape across the front of the door of that office and he ripped down that tape.

Senator MURKOWSKI. To your knowledge, were there any agents present, FBI, Park Police, others that were outside the office at that time?

Mr. SPAFFORD. Yes, he did that when everybody had congregated to go into the office.

Senator MURKOWSKI. Do you have any knowledge of who put the tape around the office? Did it say Park Police? Was it identifiable as to who sealed it?

Mr. SPAFFORD. I only remember that it was yellow tape and the only thing I know on that score is what's printed in my memo, the comment made by Mr. Neuwirth.

Senator MURKOWSKI. What comment was that?

Mr. SPAFFORD. Mr. Neuwirth said that Mr. Nussbaum had entered the office Tuesday night sometime after 10 p.m. and made a cursory review of the office looking for a suicide note, none was found, nothing was removed, a guard was then posted by the Secret Service and the office was sealed. Those were the comments that Mr. Neuwirth made to me.

Senator MURKOWSKI. Maybe the record will reflect on who sealed the office. When you entered the office, you entered together with the Park Police, the FBI and so forth?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. Now, one of the reasons the FBI, the Justice Department, and the Park Police investigators were there was to see, as has been indicated, if there was a note or any evidence relating to Mr. Foster's suicide. No note was found?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. The meeting broke up, I guess, around 2:45, about an hour and a half after the document search began; is that correct?

Mr. SPAFFORD. Approximately, yes.

Senator MURKOWSKI. So the search didn't take more than a couple of hours in the middle of the afternoon; right?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. Everybody had finished lunch?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. During lunch, was there any activity associated with searching for a note or was it just a lunch where you conversed and talked about I wonder if there is a note or——

Mr. SPAFFORD. No, we basically just discussed the proposed procedures for conducting the search.

Senator MURKOWSKI. Now, in your experience as a litigator, a 2-hour meeting to review documents is not really an extraordinary length of time, is it, especially when the document review is taking place in the middle of the day as opposed to a long night?

Mr. SPAFFORD. It depends on the case and the circumstances. I have spent days reviewing documents and I have spent less than an hour reviewing documents.

Senator MURKOWSKI. In your opinion either as a participant or an observer, were you satisfied that you had reviewed adequately the documents in that time that were a subject of review? You clearly couldn't go through the entire office?

Mr. SPAFFORD. Mr. Nussbaum made an attempt to go through as much as he could. I do not think he went through everything, that's correct.

Senator MURKOWSKI. Now, when it appeared that all the documents had been reviewed, or whatever Mr. Nussbaum wanted reviewed or presented for review, did the Park Police, the FBI and the Department of Justice investigators then leave?

Mr. SPAFFORD. Yes, they went downstairs and I later met them downstairs.

Senator MURKOWSKI. But you've just indicated that they probably didn't go through all the material because the inference is that Mr. Nussbaum more or less controlled or indicated what material would be gone through and that all the material in the office was not gone through?

Mr. SPAFFORD. All the material was not gone through, and actually Mr. Margolis had asked Mr. Nussbaum to finish, to conduct the review and identify for him any threats or unusual items.

Senator MURKOWSKI. Did the official from the Justice Department, David Margolis, indicate he wanted to talk with you after the meeting about the personal documents that you were going to be taking back to your office?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. Were you, Mr. Sloan and Mr. Nussbaum the only people remaining in Mr. Foster's office after the investigators left?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. Now, you indicated, and the Chairman indicated relative to your testimony, that Mr. Sloan came up with the briefcase and said something to the effect that there were scraps at the bottom of the briefcase?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. When he came up with the briefcase, the implication is he had it in his hand or put it on the desk or put it on the credenza?

Mr. SPAFFORD. He had it in his hand.

Senator MURKOWSKI. Was it empty at that time?

Mr. SPAFFORD. I did not see into the briefcase. I didn't see the scraps. All I know is what he said.

Senator MURKOWSKI. The material that had been in the briefcase, though, had been removed in your presence by Mr. Nussbaum?

Mr. SPAFFORD. That's correct. That was in one of three piles on the desk.

Senator MURKOWSKI. Did you observe Mr. Nussbaum—when he removed that material, he put it in three piles on the desk. Did he have the briefcase on his desk and reach down, take the things out as you normally would?

Mr. SPAFFORD. He retrieved the briefcase from behind the desk, brought it up to the top of the desk, took the files out, put the briefcase back, and then proceeded to review the files in front of all of the investigators.

Senator MURKOWSKI. Now, when Mr. Sloan came up with the briefcase and said something to the effect that there were scraps at the bottom of it, did he say this to Mr. Nussbaum?

Mr. SPAFFORD. Yes, he did.

Senator MURKOWSKI. At that time, was Mr. Sloan holding the briefcase?

Mr. SPAFFORD. Yes, he was.

Senator MURKOWSKI. Then what did he do with the briefcase when Mr. Nussbaum just acknowledged——

Mr. SPAFFORD. I don't remember because I was focusing on Mr. Nussbaum and discussing with him basically the manner in which we would proceed. He commented that he would, during his review, send to us any additional personal items that he found.

Senator MURKOWSKI. Do you remember Sloan's exact words?

Mr. SPAFFORD. No, I don't.

Senator MURKOWSKI. Do you have any recollection of where the briefcase went after that? Was it laid aside?

Mr. SPAFFORD. I don't know. All I know is that subsequently—I think it was the week after the week of the 27th—the briefcase was eventually returned to us, to Jim Hamilton and myself.

Senator MURKOWSKI. There was no conversation from Mr. Nussbaum, who's known as a tough New York litigator, about the question of what kind of scraps, or he just didn't make any acknowledgment of it?

Mr. SPAFFORD. No, sir.

Senator MURKOWSKI. Would Mr. Sloan have had an opportunity, when he perhaps had been advised that the briefcase was no longer of importance to Mr. Nussbaum, to turn around and pick up a scrap and look at it or is that——

Mr. SPAFFORD. I assume he would have had that opportunity. I didn't see what Mr. Sloan did after that.

Senator MURKOWSKI. Mr. Nussbaum didn't mention anything to Mr. Sloan relative to looking, examining or taking the scraps out of the briefcase at that time?

Mr. SPAFFORD. Not at that time.

Senator MURKOWSKI. No mention of any writing on the scraps of paper?

Mr. SPAFFORD. No, sir.

Senator MURKOWSKI. Did Mr. Nussbaum suggest that the investigators from the Justice Department, the FBI, and the Park Police be called back to the room to let them know about the scraps?

Mr. SPAFFORD. No, sir.

Senator MURKOWSKI. Did Mr. Nussbaum indicate any surprise relative to the reference to the scraps?

Mr. SPAFFORD. No, he did not. It was an off-the-cuff remark that he appeared to attach little significance to.

Senator MURKOWSKI. Mr. Sloan, in drawing attention to it, didn't do it in a way that would draw extraordinary attention, he just said there's scraps in the briefcase and dismissed it?

Mr. SPAFFORD. That's correct.

Senator MURKOWSKI. As I understand it, the comment from Mr. Nussbaum was don't worry about it, we'll look at it some other time?

Mr. SPAFFORD. Something to that effect.

Senator MURKOWSKI. Do you know if he made a note of comments that were being made and whether the reference to the scraps might have been jotted down by Mr. Nussbaum?

Mr. SPAFFORD. No. I assume at some point he did have somebody look through it because they eventually found what has now been described as the note.

Senator MURKOWSKI. That was found 4 days later, on the 26th?

Mr. SPAFFORD. That's what I understand.

Senator MURKOWSKI. Who found it? Do you recall or do you have reference to that?

Mr. SPAFFORD. All I know is what's been printed in the newspaper.

The CHAIRMAN. Senator.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Spafford, first of all, just for the record, someone suggested earlier that the briefcase was kicked and that's when the scraps of paper were found. Actually, what the depositions have shown is that it was in the course of packing this briefcase to send it, I believe, to you or to the attorneys for the Foster family that the scraps fell out of the briefcase and were then discovered. This briefcase was sent over to you, was it not?

Mr. SPAFFORD. Yes, it was.

Senator SARBANES. As I understand it from the testimony we've gotten, it was in the course of packing this briefcase up to send it over to you that the scraps were discovered.

Now, I'm concerned about the impression of one line of inquiry we've just heard. As I understood it, in the course of this review, Mr. Nussbaum, in effect, touched on all the files that were in the office. That doesn't mean he went through all of the files, but he touched on them and then responded to interest on the part of the law enforcement people one way or the other; is that correct?

Mr. SPAFFORD. That's correct.

Senator SARBANES. I take it primarily Mr. Margolis indicated that he wanted Mr. Nussbaum to further review some of those files after this process was completed and then get back to him if he, in those files, might have found something that was seen as relevant to the inquiry that Mr. Margolis and his associates were making; is that correct?

Mr. SPAFFORD. That's correct, Senator.

Senator SARBANES. So when you say it wasn't complete, you don't mean that it was not complete in the sense of touching on all the files that were there, or do you——

Mr. SPAFFORD. No, that's correct. When I said that, I meant that there was a pending request from Mr. Margolis to review in more detail some of the things that had been described and to alert him

of any things of interest. Mr. Margolis actually described the things he was interested in.

Senator SARBANES. As you understood it, it was acceptable to Mr. Margolis and, in fact, I take it established as part of the process that this would be done subsequently by Mr. Nussbaum; is that correct?

Mr. SPAFFORD. That's correct.

Senator SARBANES. Now, when Mr. Sloan made this comment about scraps in the briefcase, I think you testified in your deposition that Mr. Nussbaum responded don't worry about that now, we'll look at it when we go through everything else. I take it meaning all of these other files; is that correct?

Mr. SPAFFORD. That's correct.

Senator SARBANES. I gather from what you said earlier that, at that point, this was treated in a very matter-of-fact way and that Mr. Nussbaum was, having completed the other process, just sitting there, I think you said exhausted?

Mr. SPAFFORD. Yes, sir. He looked like he hadn't gotten much sleep in the past couple of days.

Senator SARBANES. I yield my time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Spafford, when Mr. Nussbaum was going through the material in Mr. Foster's office, it was his judgment and his review and his description by reason of the process that was going forward that everyone was obliged to rely upon; is that correct?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. So, in truth, if Mr. Nussbaum had misidentified the file or other material, it would not be clear to those present in the room that he had done so. Is that so?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. So, in that sense, everyone would have to rely on Mr. Nussbaum's good faith and integrity in going through this process in the format that you have described; is that correct?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Now, in your practice, when there is a request for the production of documents in a case or a subpoena for the production of documents in a case and among the files may be privileged material, who is the person who has the obligation of going through the material to determine first, what is relevant to the scope of the subpoena and second, whether there are any privileged materials?

Mr. SPAFFORD. The party producing the documents.

Mr. BEN-VENISTE. More particularly, who would normally perform that function?

Mr. SPAFFORD. The attorney for the party who is producing the documents.

Mr. BEN-VENISTE. In a sense, the procedure, although extremely unusual in terms of the number of people present, the timeframe and the circumstances as to why the search was being conducted, but other than those unusual aspects, do you come around full circle to the same individual who is obliged to make the review in the first instance of these materials?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. That would be the attorney protecting the privilege?

Mr. SPAFFORD. Yes, sir.

Senator SARBANES. Why don't you go back over to your side.

The CHAIRMAN. I think we can wrap this up. I think we have about 4 or 5 minutes worth of questions on this side and we can get to the next panel.

Senator SARBANES. Why don't we come back to Senator Dodd. He has just arrived. Do your 4 or 5 minutes, then we'll come back to Senator Dodd.

The CHAIRMAN. Sure. That's OK.

Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Spafford, I'd like to ask you to pull out your handwritten notes that Mr. Ben-Veniste previously questioned you about. You may recall on the first page of those notes he directed your attention to a reference to documents relating to First Family trust, et cetera. Do you see that entry?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. I also believe, on the sixth page, he directed your attention to another similar entry which says "matters re: First Family." Do you see that?

Mr. SPAFFORD. Yes, I do.

Mr. JOHNSON. You had testified earlier this morning that it was your intention, as best you could, to capture Mr. Nussbaum's exact words; is that correct?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. So if there were files relating to Whitewater or the First Family's taxes that Mr. Nussbaum intended to include within these two descriptions I've just read to you, you wouldn't have had any way of knowing that as you sat in that office on that day; isn't that correct?

Mr. SPAFFORD. Those words weren't mentioned, so no.

Mr. JOHNSON. There's also been some testimony that the nature of Mr. Sloan's comment to Mr. Nussbaum was matter-of-fact or off-the-cuff. I think those were your words. Have I got that correct?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. You don't mean to imply that Mr. Nussbaum didn't hear what Mr. Sloan said, do you?

Mr. SPAFFORD. No, I don't.

Mr. JOHNSON. In fact, he specifically acknowledged it. He said we'll look at those later?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. So it was your impression at the time, however off-the-cuff or matter-of-fact it may have been, that Mr. Nussbaum heard what Mr. Sloan said?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. A question of timing. At the conclusion of the review of the documents in Mr. Foster's office in the early afternoon of the 22nd, I think you testified that the Department of Justice representatives and the investigators had physically left Mr. Foster's office; have I got that right?

Mr. SPAFFORD. That's true.

Mr. JOHNSON. But they hadn't left the White House, had they?

Mr. SPAFFORD. No, they were waiting downstairs.

Mr. JOHNSON. If anyone wanted to call them back up to review the scraps of paper or any other documents in Mr. Foster's office, that at least would have been physically possible to do on the afternoon of the 22nd?

Mr. SPAFFORD. Yes.

Mr. JOHNSON. I take it that didn't happen?

Mr. SPAFFORD. I'm sorry?

Mr. JOHNSON. That did not happen?

Mr. SPAFFORD. No, it did not.

Mr. JOHNSON. I think you also testified that it was your impression that among the things that were being looked for was a suicide note in Mr. Foster's office?

Mr. SPAFFORD. Yes.

Mr. JOHNSON. I'm just looking at your notes, and you've illustrated to us that the arrows indicate an expression of interest by Mr. Margolis or others. Do I have that right?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. Just taking the first one on the first page, it says "list of telephone calls, 7/20." Do you see that one?

Mr. SPAFFORD. Yes.

Mr. JOHNSON. Nobody thought there was a suicide note in the list of telephone calls, did they?

Mr. SPAFFORD. No. I think they were looking for contacts or motivation, et cetera.

Mr. JOHNSON. Their inquiry was for more than a suicide note, it was of anything that was of interest that might shed some light on the reason for Mr. Foster's death?

Mr. SPAFFORD. Yes, that's true.

Mr. JOHNSON. That's how you understood it at the time?

Mr. SPAFFORD. Yes.

Mr. JOHNSON. Mr. Ben-Veniste asked you some questions about your own personal practice and how you produce documents in response to a subpoena or a document request in civil litigation, and I think you said that the attorney producing the documents has the responsibility for making the judgment about which documents should be produced. Do I have that essentially right?

Mr. SPAFFORD. Generally, yes.

Mr. JOHNSON. In your practice, the attorney producing the documents can't make the Department of Justice and FBI sit there and watch him review them, can he?

Mr. SPAFFORD. I don't think I can make the FBI and the Department of Justice do anything. I will say that it is not unusual for the Government to come in and ask for a very broad request and then to negotiate that request as to what is really important or of interest and to talk through privileged issues. That's not unusual.

Mr. JOHNSON. That's helpful. Let me just follow up on that a little bit and let me focus it because you yourself did allow investigators to review the documents that you took from Mr. Foster's office on the 22nd. Am I correct about that?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. Am I also correct that you personally made a detailed inventory of the documents you removed from the White House?

Mr. SPAFFORD. That night, when I got back, in addition to preparing this memo, I prepared a document-by-document inventory.

Mr. JOHNSON. That's one of the first things that you did?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. On that inventory, you identified every single document that was in your possession?

Mr. SPAFFORD. Yes.

Mr. JOHNSON. The reason you did that is that you wanted to have a good and permanent record of everything that had come into your possession; is that correct?

Mr. SPAFFORD. That's correct.

Mr. JOHNSON. I think Mr. Ben-Veniste also asked—and I just want to confirm it—that when the Park Police investigators came to you and requested to see something, you let them see every single thing they requested. Do I have that right?

Mr. SPAFFORD. Yes, sir.

Mr. JOHNSON. Thank you, Mr. Chairman. I don't have any further questions.

The CHAIRMAN. I yield back the balance of our time.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, this may have been gone over and if it has, then interrupt me. But just to tie this down a bit because we're going to get into a parallel line of questions, I presume, with later witnesses, let me see, Mr. Spafford, if I can't try to deal with at least the implications that some are making that there was some sort of sinister cabal going on here even involving you. At least some of the implications are—I guess when we ask your party affiliation, there's some implication here that that was a major consideration. At any rate, you were the counsel for the Foster family and as such, you have a duty to protect that family's privacy. As the attorney for that family, that's one of your responsibilities; is that correct?

Mr. SPAFFORD. Yes, sir.

Senator DODD. You were reluctant to allow law enforcement officials to rummage through Vincent Foster's personal files; is that not correct?

Mr. SPAFFORD. Yes, sir, at least until I had had an opportunity to look through them myself and talk to the family about them.

Senator DODD. That's the point I'm trying to make. In fact, Mr. Margolis even talked about a subpoena, if necessary, to get those personal family files; is that not correct?

Mr. SPAFFORD. He raised the issue of a subpoena, yes.

Senator DODD. But it was your concern, in exercising your responsibility as an attorney, as a professional, to protect the privacy of that family; is that not correct?

Mr. SPAFFORD. That's correct.

Senator DODD. So you did not get into some discussion with Mr. Nussbaum or other people at the White House to stonewall regarding documents that might have been in there that would have been embarrassing to someone?

Mr. SPAFFORD. No.

Senator DODD. Your sole motivation was to protect the privacy of your clients, the Foster family?

Mr. SPAFFORD. Yes, and to cooperate with the investigators to the best that I could because, obviously, the family has an interest in seeing that the investigation go forward.

Senator DODD. But there were no other discussions that went on involving the Travel Office, Whitewater, all of these other words that you've heard mentioned in conjunction with this?

Mr. SPAFFORD. No, I did not discuss those with Mr. Nussbaum or anyone in the White House Counsel's Office. Those never came up.

Senator DODD. So you were exercising your responsibility as attorney to that family?

Mr. SPAFFORD. That's correct.

Senator DODD. That's your sole motivation?

Mr. SPAFFORD. Yes.

Senator DODD. That's enough, thank you. Thank you, Mr. Chairman.

The CHAIRMAN. If that concludes all of the——

Senator SARBANES. I have a couple of questions.

The CHAIRMAN. Certainly, Senator Sarbanes.

Senator SARBANES. Senator Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr.——

Mr. SPAFFORD. You've been promoted.

Mr. BEN-VENISTE. That's an elected position and not one to which I can be promoted. Thank you.

With respect to the briefcase, finally, to bring closure to this point, the briefcase was Mr. Foster's personal briefcase; correct?

Mr. SPAFFORD. That's correct.

Mr. BEN-VENISTE. Is it correct, sir, that at the conclusion of the search on the 22nd, at that time you did not take that briefcase with you?

Mr. SPAFFORD. No, I did not.

Mr. BEN-VENISTE. The question of these scraps of paper had not piqued your interest to the extent that you wished to look in the briefcase or to take that briefcase with you?

Mr. SPAFFORD. No.

Mr. BEN-VENISTE. I have nothing further.

Senator SARBANES. Let me ask you this question, Mr. Spafford, because we're going to have another panel here: When Mr. Sloan made this comment to Agent Salter, I take it Mr. Nussbaum put down Mr. Sloan right on the spot?

Mr. SPAFFORD. He basically cut him off and defused the situation and said let's move on, and it became a non-event.

Senator SARBANES. Mr. Nussbaum indicated they were to cooperate?

Mr. SPAFFORD. Yes, he did.

Senator SARBANES. He, in effect, cut that right off; is that correct?

Mr. SPAFFORD. That's correct.

Senator SARBANES. OK. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. If there's no one else, we'll go to the second panel.

Senator KERRY. Mr. Chairman, just a couple of questions.

The CHAIRMAN. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Spafford, you took extensive notes, as the Committee has seen. I believe they're the most extensive notes of anybody who was present. Do you know that now to be a fact?

Mr. SPAFFORD. I don't know. I did take notes and made a conscious decision to take detailed notes.

Senator KERRY. When you went back to your law firm, you typed up those notes?

Mr. SPAFFORD. I prepared a memorandum which summarized what happened and I prepared a detailed inventory of the documents I brought back.

Senator KERRY. Now, a number of other Senators—I've been watching some of the testimony in my office—have drawn this out of you, but I want to understand it completely, the totality of your role there. You had no contact with Mr. Foster or Mr. Nussbaum prior to this, relative to any business in the office?

Mr. SPAFFORD. That's correct. The first time I met Mr. Nussbaum was on the 22nd. I never met Mr. Foster.

Senator KERRY. The only reason you walked into that room that day was what?

Mr. SPAFFORD. I was asked to be there to represent the interest of the family.

Senator KERRY. Is it your judgment today that you were adequately able to do that?

Mr. SPAFFORD. Yes, I did it to the best of my ability, and I think I succeeded.

Senator KERRY. Did anything interfere with that ability or with any effort that you would have liked to have made?

Mr. SPAFFORD. No.

Senator KERRY. Did you notice or make any observation whatsoever with respect to anybody's activity in that room that suggested to you in any way there was something unusual going on?

Mr. SPAFFORD. No, sir.

Senator KERRY. Did your notes in any way whatsoever reflect any comment of yours that questions any of the procedure?

Mr. SPAFFORD. Of mine or anyone else present?

Senator KERRY. Of anything that happened in that room?

Mr. SPAFFORD. No, sir.

Senator KERRY. What conclusion do you draw today with respect to your earlier testimony and the depositions about the observation with respect to small scraps of paper in the briefcase? How did it hit you, just as an average person making a judgment about what happened? Was there an effort to dismiss that? Was there—let me let you describe it. What did you notice?

Mr. SPAFFORD. There was no effort to dismiss that. It was an observation, like I said, a matter-of-fact, off-the-cuff statement, and the response from Mr. Nussbaum was essentially I agreed with Mr. Margolis; I would look through these documents, and we would do that review later. We'll get to that later. I didn't think there was any attempt to cover anything up or anything like that.

Senator KERRY. The allegation here obviously that the Committee is interested on both sides in understanding is whether or not

somehow the procedure that Mr. Nussbaum set up—and I know you're not the sole repository of judgment on this, and there are others who will testify—but from your perspective, can you help us understand whether we should somehow have a large measure of suspicion about the way in which that was carried out, or are there questions unanswered from your perspective that we should be asking?

Mr. SPAFFORD. I don't know of any questions that have been left unanswered. My view is that Mr. Nussbaum adopted a very professional approach. He was attempting to balance interests: on the one hand, privilege; on the other hand, cooperation with the investigators. He tried to strike that balance, and I think he succeeded in the procedures and the method that he adopted. I don't think there was any intent to hide anything.

Senator KERRY. Is it fair to say if you were an investigator and you thought that a particular procedure had been set up, and then that procedure was summarily changed, whether or not it was for legitimate reasons, that you might then, as an investigator, have a reason to feel a little jilted or somehow out of sorts?

Mr. SPAFFORD. I think that's a fair assumption.

Senator KERRY. But you personally are saying to us that you didn't observe anything in the procedure that gave credence to the notion that anything but a legitimate examination of those documents was taking place?

Mr. SPAFFORD. That's correct.

Senator KERRY. I have no further questions. Thank you.

The CHAIRMAN. Are there any other questions? If there are not, Mr. Spafford, we want to thank you for your cooperation. I also want to commend you for the thoroughness and detail of your testimony. As Senator Kerry and others have pointed out, the meticulous way in which you took notes and recorded what took place certainly is a great testimony to you professionally, and we thank you for your cooperation.

Mr. SPAFFORD. Thank you, sir.

Senator DODD. Mr. Chairman, you ought to be careful. You're going to have an awful lot of lawyers who want a similar endorsement.

The CHAIRMAN. If they do the kind of job he did in taking those notes—not only taking the notes but later on going back——

Senator DODD. You're not allowed to put a 1–800 number up, now.

The CHAIRMAN. Do you have a 1–800 number?

Mr. SPAFFORD. No.

The CHAIRMAN. —and preparing that memo to the file—that certainly is a testimony to your training.

Mr. SPAFFORD. Thank you, Senator.

The CHAIRMAN. Thank you.

Senator KERRY. If we keep doing these investigations, you'll all be fully employed anyway.

The CHAIRMAN. We're going to call our next panel, Mr. Adams, Mr. Salter, and Mr. Flynn.

[Witnesses sworn.]

We're going to start with Mr. Adams, then we will go to Mr. Flynn and Mr. Salter. If you have statements we would be glad to receive them at this time.

Mr. Adams.

SWORN TESTIMONY OF ROGER C. ADAMS
COUNSEL TO THE DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. ADAMS. Thank you, Mr. Chairman. I do have a brief opening statement.

The CHAIRMAN. Mr. Adams, you can pick it up; don't be afraid to move it. That's it.

Mr. ADAMS. Is that better? Thank you, Mr. Chairman and Members of the Committee. Good afternoon. My name is Roger Adams. I'm an attorney with the Department of Justice. I first joined the Criminal Division of the Department in 1972 and have been with that Division ever since. During that time I have had a variety of responsibilities and have had several details and special assignments.

One such detail began on May 6, 1993 when I was asked to join the staff of Philip B. Heymann who had been nominated to be Deputy Attorney General. After Mr. Heymann was confirmed, he asked me to remain on his staff.

I was on Mr. Heymann's staff in July 1993, and I am still in the Deputy Attorney General's Office today. My present title is Counsel to the Deputy Attorney General.

On July 22, 1993, I was present when a search was conducted of the office of the late Vincent Foster, who had committed suicide 2 days previously.

I will try to answer any factual questions the Committee may have concerning my recollection of the details of this search and the events leading up to it.

The CHAIRMAN. Thank you very much, Mr. Adams.

Mr. Flynn.

SWORN TESTIMONY OF DONALD A. FLYNN
SPECIAL AGENT, U.S. SECRET SERVICE

Mr. FLYNN. Mr. Chairman and Members of the Committee, my name is Donald A. Flynn. I'm a special agent with the U.S. Secret Service, where I've been employed for the past 14 years. I'm here to cooperate and answer any questions with regard to this inquiry. Thank you.

The CHAIRMAN. Mr. Salter.

SWORN TESTIMONY OF SCOTT SALTER
SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION

Mr. SALTER. Yes, sir, my name is Scott Salter. I'm a special agent with the FBI here in Washington, DC, and I'm prepared to answer any questions from the Committee.

The CHAIRMAN. Were you involved in any way with this investigation?

Mr. SALTER. Yes. I became involved in the investigation on July 21, 1993, and continued through about the first week in August 1993.

The CHAIRMAN. Thank you, Mr. Salter.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Adams, let me direct your attention to July 1993. On July 21, 1993, the day after Vincent Foster's body was discovered in Fort Marcy Park, were you assigned by the Deputy Attorney General of the United States to go to the White House in connection with an investigation being conducted by the Park Police?

Mr. ADAMS. Yes, I was.

Mr. CHERTOFF. With respect to you, Agent Salter, were you also on that same day, July 21, 1993, directed to go to the White House in connection with an investigation being conducted by the Park Police?

Mr. SALTER. Yes, I was.

Mr. CHERTOFF. Can you tell us, Mr. Adams, where you went in the White House?

Mr. ADAMS. Where I went in the afternoon of the 21st? I went with Mr. Margolis to the Office of the White House Counsel, Bernie Nussbaum.

Mr. CHERTOFF. Agent Salter, did you go to that office as well at some point later in the day on the 21st?

Mr. SALTER. Late in the day on the 21st, I did.

Mr. CHERTOFF. Were you there together with Mr. Adams?

Mr. SALTER. Yes.

Mr. CHERTOFF. Agent Salter, what was your purpose in being there in Mr. Nussbaum's office late in the day on the 21st?

Mr. SALTER. On July 21st, our field office opened a preliminary inquiry into the investigation of Mr. Foster's death. It was our instructions that the U.S. Park Police was the lead agency on this investigation, and we were there to assist them.

Mr. CHERTOFF. So the Washington field office of the FBI had opened a preliminary inquiry into the death?

Mr. SALTER. That's correct.

Mr. CHERTOFF. Mr. Adams, when you were there, were you there with another prosecutor from the Department of Justice on the 21st?

Mr. ADAMS. Yes.

Mr. CHERTOFF. Was that David Margolis?

Mr. ADAMS. Yes, it was.

Mr. CHERTOFF. Who is David Margolis?

Mr. ADAMS. At the time, Mr. Margolis, like myself, was on detail to the Deputy Attorney General's Office. He is a career official with the Criminal Division. He was a Deputy Assistant Attorney General in the Criminal Division, but he was on detail to the Deputy's Office.

Mr. CHERTOFF. Mr. Margolis, I take it, has spent many, many years as a criminal prosecutor?

Mr. ADAMS. Yes, sir, he has.

Mr. CHERTOFF. Now, Agent Flynn, you were also present, I believe, on the 21st in the meeting in Mr. Nussbaum's office?

Mr. FLYNN. Yes, sir.

Mr. CHERTOFF. Was the Secret Service itself engaged in any investigative activity regarding Mr. Foster's death?

Mr. FLYNN. No, sir.

Mr. CHERTOFF. You were there, essentially, representing the Secret Service in connection with what was going to be certain activity in Mr. Foster's office?

Mr. FLYNN. Correct, sir. My role in this situation was we were providing a service to facilitate members of the Department of Justice, the FBI and the Park Police and escorting them in and out of the complex places they needed to go.

Mr. CHERTOFF. Mr. Adams, focusing your attention on the 21st, late in the day when you were with Mr. Nussbaum and Mr. Margolis and others in Mr. Nussbaum's office, did you have a discussion with Mr. Nussbaum concerning a review of documents in Mr. Foster's office which law enforcement authorities wanted to undertake?

Mr. ADAMS. Yes, we did.

Mr. CHERTOFF. If you would pull the microphone just a little bit closer. Would you tell us about that discussion?

Mr. ADAMS. The purpose of the discussion was to go over the ground rules under which the search would be conducted. The discussion lasted, as best I can recall, 10 or 15 minutes, maybe 20. The first thing we agreed on was that because of the lateness of the hour and people from the White House having been through considerable strain the night before, many of them having had very little sleep, Mr. Nussbaum suggested that it not take place that day, that it go over until the next day. There was no disagreement on that point. It seemed perfectly reasonable and everyone agreed to that.

There then ensued a fairly brief discussion about how the search should be conducted. The gist of the discussion was that Mr. Margolis and myself, together with Mr. Nussbaum, would examine at least the outside of each file or the first page of each file to determine, first of all, if it were relevant to the suicide investigation and, if it were deemed relevant, to then address issues of possible privilege.

Mr. CHERTOFF. In the course of that discussion, was an understanding reached?

Mr. ADAMS. Yes, it was. I think the understanding was just about as I have described it, that Mr. Margolis and I together with Mr. Nussbaum would make this very cursory review of at least the title or possibly the first page of each file.

Mr. CHERTOFF. Based on that review, it would be determined what documents could be looked at by the FBI and the Park Police?

Mr. ADAMS. Yes, that's correct.

Mr. CHERTOFF. Now, do you remember in the course of this conversation on the 21st whether Mr. Neuwirth from Mr. Nussbaum's staff interjected something into the discussion?

Mr. ADAMS. Yes, he did. It was after this agreement had been reached between Mr. Nussbaum and—primarily Mr. Margolis was doing the speaking for the Justice Department. After this agreement was reached, Mr. Neuwirth, either attempting to summarize the agreement or to change the terms of the agreement, made a statement to the effect OK, Bernie will examine each file and Bernie will determine issues of relevance and privilege.

He was immediately corrected, I think, by Mr. Margolis, and we restated the agreement, as we had agreed to, which was namely

that Mr. Margolis and I would examine the title or the first page of each file to determine issues of relevance and privilege.

Mr. CHERTOFF. So the understanding when you left that office on the 21st, was that you and Mr. Margolis, jointly with Mr. Nussbaum, would examine enough of each document to make a determination about relevancy and privilege?

Mr. ADAMS. Yes, and it was our anticipation that it would be a very, very summary review. As I've indicated, it would be just the review of, typically, the title page, possibly the first page of every document. But, yes, it was our understanding this would be a joint review.

Mr. CHERTOFF. After you and Mr. Margolis returned to the Department, do you know whether that agreement or understanding was reported to the Deputy Attorney General?

Mr. ADAMS. I did not speak with the Deputy Attorney General that afternoon. It's my understanding that Mr. Margolis did, and he reported that agreement to Mr. Heymann.

Mr. CHERTOFF. Again, to make clear, when we say "agreement," I understand this was not an agreement like a written contract you go to court to enforce. It was a gentleman's handshake agreement; right?

Mr. ADAMS. Yes, it was our understanding; that's correct.

Mr. CHERTOFF. Now, the next day, did you come back in the morning to carry out this agreement?

Mr. ADAMS. Yes, we did.

Mr. CHERTOFF. Did you go in the morning to Mr. Nussbaum's office?

Mr. ADAMS. Yes, we did, arriving at approximately 10 a.m.

Mr. CHERTOFF. What happened?

Mr. ADAMS. Mr. Nussbaum announced that he had decided to change the procedure for the search or inventory of the office. He said that he alone would look at each document to determine relevance and privilege, and that we would not be doing that.

Mr. CHERTOFF. When you say "we would not be doing" it, you mean——

Mr. ADAMS. Mr. Margolis and myself would not be looking at the documents. Mr. Nussbaum would be doing that himself.

Mr. CHERTOFF. What was the reaction that you or Mr. Margolis had to that?

Mr. ADAMS. We pointed out that that was completely inconsistent with the agreement of the day before, and we argued with Mr. Nussbaum. We said this was not what we had agreed to, that he was making a mistake, and we were going to have to call our boss, the Deputy Attorney General.

Mr. CHERTOFF. What did Mr. Nussbaum say?

Mr. ADAMS. I can't recall exactly what Mr. Nussbaum said at that point. Mr. Margolis, in fact, did call Phil Heymann.

Mr. CHERTOFF. Tell us what happened then.

Mr. ADAMS. I cannot recall whether Mr. Heymann got Mr. Nussbaum on the telephone or not. Either he did that, or he relayed his own opposition to this change in plans through Mr. Margolis. At any rate, the position of Mr. Heymann was communicated to Mr. Nussbaum, that he was making a mistake to make this change in plans.

Mr. CHERTOFF. In other words, Mr. Heymann's position was that Mr. Nussbaum was making a mistake in changing this agreement?

Mr. ADAMS. That's correct.

Mr. CHERTOFF. Now, I want to still focus on these discussions you're having on the morning of the 22nd when Mr. Nussbaum changes the deal here and I want to ask you, first of all, whether you had prepared a document the next week, the week of the 26th, that summarizes your recollections of what happened on this particular day.

Mr. ADAMS. Yes, the following week, I did.

Mr. CHERTOFF. Do you have a copy of that with you?

The CHAIRMAN. I take it the Committee has been furnished a copy of this?

Mr. CHERTOFF. Yes.

The CHAIRMAN. Mr. Ben-Veniste, we all have copies.

Mr. CHERTOFF. Yes, it is F149, and perhaps we could put it up on the Elmo.

Mr. ADAMS. I do have a copy, yes.

Mr. CHERTOFF. While we're putting this up and getting it focused, I want to ask you why did you prepare this document the next week?

Mr. ADAMS. At the time I prepared the document, Mr. Heymann had instructed me to do such a document because he was concerned with various things that had transpired between the Justice Department and the White House, and he instructed me to prepare, essentially, a listing of things that happened——

Senator KERRY. Could you speak up a little?

Mr. ADAMS. He instructed me to prepare a listing of things that we didn't like.

Mr. CHERTOFF. He did this because he was concerned about the way things had been handled?

Mr. ADAMS. He was concerned about—yes, various events that had transpired.

Mr. CHERTOFF. So this document was prepared at the Deputy Attorney General's request the following week. Let me move you down to about the middle of the second paragraph where it says "the next morning," and I'd like to ask you to read that to the end of the paragraph there.

Mr. ADAMS. It says:

> The next morning, however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide privilege issues himself. The Justice Department attorneys pointed out that that was inconsistent with the previous day's agreement and would cause problems. We stated that the Counsel's Office would be better off to allow the Department attorneys to decide or at least help decide privilege issues because that would allow the White House to say that the issue was considered independently. Moreover, we stated that we had been asked to undertake this particular assignment at the White House in part because we had reputations of not talking to the press or 'leaking.' Mr. Nussbaum did not immediately begin the search but waited for about 2½ hours—during which time he said he was considering whether to allow us to see the documents—before deciding that only he and Associate Counsels Neuwirth and Sloan would see the documents.

Mr. CHERTOFF. So, then, at the end of this discussion or at least as of the point you finally got into Mr. Foster's office, Mr. Nussbaum's final decision was that he, Mr. Neuwirth and Mr. Sloan would be the only people to see the documents; correct?

Mr. ADAMS. In the morning, he listened to our arguments, and he said he would think it over and get back to us.

Mr. CHERTOFF. When he got back to you——

Mr. ADAMS. When he got back to us, it was 2½ hours later, and his decision was only that he and Mr. Neuwirth or Mr. Sloan would be the ones who saw the documents.

Mr. CHERTOFF. After that 2½-hour period of thinking it over, his final decision was that only White House Counsel's people would see the documents?

Mr. ADAMS. That's correct.

Mr. CHERTOFF. Agent Salter, you were there on that morning of the 22nd expecting to go into the room and look at documents; right?

Mr. SALTER. I expected initially that we would conduct interviews and that the review of the documents in the office would follow after that.

Mr. CHERTOFF. Was it your understanding from the conversation that morning that essentially Mr. Nussbaum changed the agreed-upon ground rules of the search?

Mr. SALTER. After the search began, it was clear to me that the ground rules had been changed.

Mr. CHERTOFF. You understood the original ground rules to be as Mr. Adams said, Department lawyers would be participating in the initial review?

Mr. SALTER. I wasn't familiar with all the details of it, but I believed that the investigators would have access to the documents themselves.

Mr. CHERTOFF. That didn't happen?

Mr. SALTER. That did not.

Mr. CHERTOFF. Now, I want to take you back to the actual afternoon where this review process begins. Mr. Adams, can you tell us generally where you and the other law enforcement personnel were seated and where the White House Counsel's people were situated?

Mr. ADAMS. Yes. Mr. Nussbaum was seated at Vince Foster's desk. Standing behind him were Steve Neuwirth and Cliff Sloan. Mr. Margolis, myself and the law enforcement officers were seated in what I describe as a rough semicircle around the desk in rough rows. Standing off to one side was the Foster family's attorney Mr. Spafford.

Mr. CHERTOFF. Tell us what happened.

Mr. ADAMS. Mr. Nussbaum proceeded to pull documents out of the desk, out of the credenza and to place them in one of three piles.

Mr. CHERTOFF. What were the three piles? How did he describe these three piles?

Mr. ADAMS. It was my understanding that the three piles were—one pile was personal material that was going to go to the Foster family. The second pile was material that was going to be redistributed to other attorneys in the White House Counsel's Office. They were going to continue to work on it there. It was my understanding that the third pile was material that Mr. Foster had been working on that was personal material of the President and Mrs. Clinton, and that material was going to go to an outside lawyer for the Clintons.

Mr. CHERTOFF. Now, in conducting this review, did Mr. Nussbaum ever show any of the law enforcement people any of the documents?

Mr. ADAMS. No, he did not.

Mr. CHERTOFF. How did he describe them?

Mr. ADAMS. As best I can recall, with most of the documents he made just a generic description, something like this is personal; this is going to the family of Vince Foster, this is something that Vince has been working on; it's relevant to work of the White House Counsel's Office; it's going to be distributed to other lawyers in the office.

Another thing he would say is this is something he had been working on for the President personally. This is going to the President's outside attorney. Now, there were occasions where some documents he would describe a little bit more definitely than that, but it's my recollection that, in general, it was just a generic description of them.

Mr. CHERTOFF. Although he would sometimes describe certain documents more specifically, sometimes he would describe them very generally?

Mr. ADAMS. Yes, that's correct.

Mr. CHERTOFF. He decided what degree of specificity he was going to use in describing documents?

Mr. ADAMS. That's right. We never got to see them.

Mr. CHERTOFF. Agent Salter, is that your recollection, that you never got to see any of the documents?

Mr. SALTER. That's correct.

Mr. CHERTOFF. You were not in a position to know what was in them other than the general descriptions being given by Mr. Nussbaum?

Mr. SALTER. That's correct.

Mr. CHERTOFF. I know there's an incident where you stood up at one point in the room. Can you tell us about that?

Mr. SALTER. I was seated at the end of the sofa next to Detective Pete Markland from the Park Police, and I think there was a third person seated at the opposite end from me. I think the review of documents had been going on for about 30 minutes with the three of us seated on the couch. There wasn't a lot of room. After about 30 minutes, I stood up and stood at the end of the couch, and in front of me was Mr. Margolis and then the desk.

After standing there for just a few minutes, Mr. Cliff Sloan looked at me and said, excuse me, agent, you aren't standing there so you can see the documents on Mr. Nussbaum's desk, are you? At that point, I merely said that—I told Mr. Sloan that I thought he was getting carried away, and then Mr. Nussbaum interjected and said, of course, we're all on the same side here, words to that effect. That was the end of the incident.

Mr. CHERTOFF. Can you tell us, Mr. Adams, during the course of this procedure and in general, what was Mr. Margolis' reaction to the way in which Mr. Nussbaum had decided to carry out this review process?

Mr. ADAMS. At the point in time when we all went into Vince Foster's office to begin the search, Mr. Margolis again interposed an objection to the procedure. He said, as best I can recall, that

this was a mistake and that Mr. Nussbaum might as well conduct the review himself and mail us the results, or mail Mr. Margolis the results.

Mr. CHERTOFF. Do you remember, Agent Salter, whether Mr. Margolis complained during the course of the review process about his inability to be able to register objections or make specific requests for documents because he wasn't getting enough description?

Mr. SALTER. Yes.

Mr. CHERTOFF. Tell us about that.

Mr. SALTER. At one point, I recall that Mr. Nussbaum described documents as he went through and declared that they were not pertinent to the investigation, and I know Mr. Margolis responded by saying how do we know if they're pertinent or not if we don't get to look at the documents.

Mr. CHERTOFF. What did Mr. Nussbaum say?

Mr. SALTER. I don't recall him having any response to that. He——

Mr. CHERTOFF. After that, did he start showing the documents to Mr. Margolis?

Mr. SALTER. No.

Mr. CHERTOFF. Now, I want to direct your attention to certain specific items in the office. Do you recall whether there was a computer in the office?

Mr. ADAMS. Yes, I do.

Mr. CHERTOFF. Mr. Adams, was a request made to turn the computer on and review what might be on it?

Mr. ADAMS. Yes, there was.

Mr. CHERTOFF. What did Mr. Nussbaum say?

Mr. ADAMS. He said no, he would not turn the computer on for two reasons. He said, one, there might be privileged material on there and, two, he doubted there was anything on there anyway because Vince Foster very rarely used his computer or word processor.

Mr. CHERTOFF. Was there a burn bag in the office?

Mr. ADAMS. I don't recall.

Mr. CHERTOFF. Agent Salter, do you remember if there was a burn bag?

Mr. SALTER. I recall there being a burn bag there.

Mr. CHERTOFF. Who looked in the burn bag?

Mr. SALTER. Mr. Nussbaum.

Mr. CHERTOFF. What did Mr. Nussbaum say was in it?

Mr. SALTER. Basically, he said that there was nothing in there that was pertinent to the investigation. I don't recall the specific items that were in there.

Mr. CHERTOFF. Let me turn to the issue of a briefcase. Did there come a point in time in this search that Mr. Nussbaum turned his attention to a briefcase, Mr. Adams?

Mr. ADAMS. Yes, there did.

Mr. CHERTOFF. Would you tell us what he did with respect to the briefcase?

Mr. ADAMS. The briefcase, as best I can recall, was on the floor. He picked up the briefcase, announced that this was Vince's briefcase and he would proceed to inventory the items in the briefcase

in the same manner as he had inventoried the items on and in the desk and credenza, and he proceeded to take files and documents from the briefcase and describe them as he had described the other documents in the office.

Mr. CHERTOFF. Did he do anything else with the briefcase?

Mr. ADAMS. I don't recall that he did, no.

Mr. CHERTOFF. Were you able to look inside the briefcase?

Mr. ADAMS. No, sir.

Mr. CHERTOFF. He didn't give you an opportunity to examine the interior?

Mr. ADAMS. No, he didn't.

Mr. CHERTOFF. Agent Salter, do you remember the handling of the briefcase?

Mr. SALTER. Yes, I do.

Mr. CHERTOFF. Would you tell us what you recall about how the briefcase was handled by Mr. Nussbaum?

Mr. SALTER. Mr. Nussbaum, after he completed looking at the items in the desk, turned to his right and basically at his foot was a briefcase, and he reached down and I recall him picking it up and basically announcing that he was going to go through the items in the briefcase. I thought he sat it back down on the floor, reached down, pulled the items outs of the briefcase, put each item on the desk and reviewed them.

Mr. CHERTOFF. Did he make a comment or indicate in any way at the end of taking those items out that the briefcase was empty?

Mr. SALTER. I recall that he picked the briefcase up by the handles. The way he held it up, it was obvious there was nothing left in the briefcase. He stated that it was empty and he turned and placed it behind him against the wall.

Mr. CHERTOFF. He picked it up with both hands like this? Was it open, as far as you could tell?

Mr. SALTER. Yes, it was open, yes.

Mr. CHERTOFF. You could not see inside it?

Mr. SALTER. No.

Mr. CHERTOFF. But from his angle of vision he could see inside it, so far as you could tell?

Mr. SALTER. Yes.

Mr. CHERTOFF. He indicated it was empty?

Mr. SALTER. Yes.

Mr. CHERTOFF. Would you have been interested to learn at some point that there were torn pieces of paper there?

Mr. SALTER. Yes.

Mr. CHERTOFF. Now, do you remember Mr. Spafford being there representing the Foster family, Agent Salter?

Mr. SALTER. Yes.

Mr. CHERTOFF. Did there come a time that a request was made to have that personal attorney collect the documents that were personal to the Foster family and remove those to be looked at later by law enforcement? Is that correct, Mr. Adams?

Mr. ADAMS. It's my understanding that at the end of the meeting, Mr. Margolis had no objection to the Foster family's personal attorney taking the documents that had been deemed personal and taking them at that time. I don't recall any conversation that he might have had about later turning them over to law enforcement.

Mr. CHERTOFF. Agent Salter, do you remember any conversation concerning the decision to have the Foster family's personal attorney remove or take away the personal Foster documents from the office?

Mr. SALTER. Yes.

Mr. CHERTOFF. Tell us about that.

Mr. SALTER. I recall that there were just a few items that were personal in nature, not related to Mr. Foster's work at the White House, and the Park Police wanted to review those, and it was—I think we all agreed it would be easier for the Park Police to have access to them if the family's attorney took them and they could be reviewed outside of the West Wing of the White House.

Mr. CHERTOFF. When you say we all agreed, you mean yourself, Mr. Margolis and other investigators?

Mr. SALTER. Yes.

Mr. CHERTOFF. So you actually thought it would be more accessible to you if it was at the family attorney's office rather than if it remained at the White House?

Mr. SALTER. Yes.

Mr. CHERTOFF. Was that based upon your experience of the preceding couple of hours?

Mr. SALTER. Yes, that and also our experience in getting escorts and getting into the West Wing. It would have been easier just to go to the private attorney's office.

Mr. CHERTOFF. Now, Agent Salter, let me ask you, did there come a point after this process of review had taken place that a request was made by Mr. Margolis regarding this continuing to keep the Foster office secure?

Mr. SALTER. After the search?

Mr. CHERTOFF. Right. After Mr. Nussbaum had finished his procedure of going through the documents and making the piles, did Mr. Margolis make a request concerning keeping the office sealed?

Mr. SALTER. I don't recall that.

Mr. CHERTOFF. Let me direct your attention—I'm going to read and see if I can refresh your memory from your deposition. Maybe we can get him a copy of his deposition.

Senator SARBANES. At what page, Michael?

Mr. CHERTOFF. This is page 120.

Mr. SALTER. Page 120?

Mr. CHERTOFF. You might want to start at page 118 and read to page 120. Just read it to yourself and see if it refreshes your memory.

Does that refresh your memory concerning any discussion about the office remaining sealed or closed?

Mr. SALTER. The office was locked prior to the review of the documents and the key was kept in Agent Flynn's possession. After the review of the documents, Mr. Nussbaum said that he would keep the key.

Mr. CHERTOFF. Did he indicate he would continue to keep the office secured in any way or not?

Mr. SALTER. No. I recall that Mr. Nussbaum said he would retain the key, but I don't recall him specifically saying that he would ensure that the office was secured such that the law enforcement could come back and look at it further.

Mr. CHERTOFF. Now, Mr. Adams, let me ask you at the close of this procedure, was it your understanding that Mr. Nussbaum had gone through all the documents in the office?

Mr. ADAMS. I can't answer that because I was not able to see, for example, into the bottom of the desk drawer and into the credenza. I couldn't tell you whether there were additional documents in there or not.

Mr. CHERTOFF. What about you, Agent Salter?

Mr. SALTER. I'm sorry, can you repeat——

Mr. CHERTOFF. Was it your impression at the end of this procedure that the entire search of the office had been complete, that Mr. Nussbaum had looked at everything in the office?

Mr. SALTER. No, I don't believe he had looked at everything in the office.

Mr. CHERTOFF. Did he indicate to you at any time, during the time you were there at the White House, Mr. Adams, that he was planning to have the First Lady's Chief of Staff come down after you left and conduct a second search?

Mr. ADAMS. I don't recall him saying anything about that.

Mr. CHERTOFF. What about you, Agent Salter, did you hear from Mr. Nussbaum or anybody else when you were in the office on that afternoon, in Mr. Foster's office, that the First Lady's Chief of Staff was going to be coming down a couple hours later to do a second search?

Mr. SALTER. I don't recall that.

Mr. CHERTOFF. Agent Salter, let me direct your attention to a period a couple weeks later. Do you recall a period of time the next week when it became known to the Department of Justice that a torn-up piece of paper had been found at the bottom of Mr. Foster's briefcase?

Mr. SALTER. Yes.

Mr. CHERTOFF. Were you asked to conduct an investigation in connection with the finding of that note?

Mr. SALTER. Yes.

Mr. CHERTOFF. Was that an investigation that was ultimately ordered by the Deputy Attorney General?

Mr. SALTER. Yes, it was.

Mr. CHERTOFF. In connection with that order, did you interview Clifford Sloan?

Mr. SALTER. Yes, I did.

Mr. CHERTOFF. Did Clifford Sloan tell you on the 22nd, 4 days before Monday the 26th, he had seen torn pieces of paper in the bottom of that briefcase?

Mr. SALTER. He did not tell me that.

Mr. CHERTOFF. Is that a fact you would have liked to have known when you were conducting your investigation?

Mr. SALTER. Yes.

Mr. CHERTOFF. I'll yield the Chairman the remainder of my time.

The CHAIRMAN. I'm going to ask one question. Mr. Adams, if you had been advised that Mr. Nussbaum was going to hold or conduct another search of the documents with Mrs. Clinton's Chief of Staff, would you have objected?

Mr. ADAMS. I'm not sure that I would have or not. It's very hard to say at this time. Let me just explain my answer, if I can, Mr. Chairman.

The CHAIRMAN. Certainly.

Mr. ADAMS. What we were mostly concerned with was making sure that the Park Police and the FBI had access to whatever they deemed relevant in the office. We were mostly concerned with that. I would have been more concerned if I had thought that there were additional files that hadn't been examined at all, then I would be concerned about somebody else coming in to conduct a——

The CHAIRMAN. Isn't that, in fact, what took place? What I'm saying is if you had known what took place thereafter—and, indeed, we know that at least one file that had the 1992 taxes was omitted in the first search. Indeed, I read your memo here where you say that during the search, clearly, the only people who actually saw the documents—do you have this in front of you? First page, last sentence, "During the search, Mr. Nussbaum, Neuwirth and Sloan stayed behind Mr. Foster's desk and examined documents pulled from the desk, nearby credenza and a briefcase. No other persons actually saw the documents."

Now, did that violate the spirit of the agreement, as you were led to understand?

Mr. ADAMS. It violated the spirit of the agreement we reached the day before, yes.

The CHAIRMAN. Now, if you had been apprised that after this examination during which you were not permitted to see the documents and during which you say, in the next sentence, "where the agent stood up and Mr. Sloan stated to an FBI agent who was standing, 'You're not standing to get a look at the documents, are you?' And then the agent indicated he was not but sat down. In the particular setting"—these are your words—"In the particular setting the remark was"—and then in parentheses "(to put it charitably) extremely offensive."

And I'll read into the record the fact that there was another review of the office, and in this case the Chief of Staff for the First Lady was given access to these remaining documents. Now, I ask you whether that was appropriate given the issue of privilege concerning not only national security, but also attorney-client with respect to the Fosters and their documents, et cetera? Was it appropriate to have Maggie Williams there?

You're an attorney, and you don't talk just from the criminal side, and you've been there for 20-plus years, so do you have an opinion?

Mr. ADAMS. I really don't have an opinion, no.

The CHAIRMAN. OK. Do you have one more question?

Mr. CHERTOFF. I have one more question relating to something you said in answering the Chairman's question. You indicated that to you, one of the considerations you would have about whether you would raise an objection to a second search of the office was whether that second search of the office with the First Lady's Chief of Staff had involved documents that had not even been taken out and displayed to you; correct?

Mr. ADAMS. That's correct.

Mr. CHERTOFF. Was it your understanding that—let me withdraw the question. I take it the documents that were displayed to you were put in one of these three piles, as you understood it?

Mr. ADAMS. No documents were actually displayed to us. The documents were described to us and put in one of the three piles, yes.

Mr. CHERTOFF. So if there was a subsequent search that involved reviewing documents that had not been pulled out and at least held up in front of you, even if you could not see them or they had not actually been described as to what those documents were, you wouldn't even have gotten a cursory sense of what they might be?

Mr. ADAMS. No, we wouldn't have if they were additional documents, and I don't know whether that's true or not.

Mr. CHERTOFF. As to that, you would have had a problem if there had been a second search of those documents that you hadn't even been given some kind of an opportunity to hear about?

Mr. ADAMS. I would have had a problem, but the problem would not have been a great one had I subsequently learned that there were things like tax returns and personal financial information of the Clintons. I would have assumed they didn't have much to do with a suicide investigation. It would have been nice if we had seen them or had them described to us, at least, but the fact that they weren't did not give me a great deal of concern, no.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Adams, did you assume at the end of this process that the files would be put back to work, so to speak, in the Counsel's Office? After all, some of those matters were ongoing matters. What was your assumption about that?

Mr. ADAMS. I don't even have to assume. I know what Mr. Nussbaum said he was going to do, and that was to distribute a number of those files to other attorneys in the White House Counsel's Office. It seemed perfectly reasonable and appropriate to me that he would do that.

Senator SARBANES. So you saw that as a reasonable thing to do. You didn't expect these files simply to be frozen and kept frozen. I know your problem with the nature of the review because you've outlined that here, but passing beyond that, once the review was finished—and I understand your concerns about it—but beyond that, these files would then go back to work and other attorneys would then have to get at them and do their job; is that right?

Mr. ADAMS. Obviously, Senator, the work of the White House Counsel's Office has to go on. Those documents are files that Mr. Nussbaum described as routine work of the White House Counsel's Office and appeared to have nothing to do with the suicide of Mr. Foster. I had no problem with them being immediately distributed around to other attorneys in the office. I have to underscore, though, that all I had was Mr. Nussbaum's word for what those documents contained, what those files contained.

Senator SARBANES. I understand that, and I tried to allow for that. In fact, you not only had no objection, but actually favored that the matters that were personal to Mr. Foster should be taken from the office by his attorney; is that correct?

Mr. ADAMS. I had no objection to that happening, no.

Senator SARBANES. I understood you all were supportive of that. Didn't you say that, Mr. Salter?

Mr. SALTER. I agreed that the—I had no problem with the documents being taken by the Foster family attorney.

Senator SARBANES. You had no problem with Mr. Foster's personal attorney taking those documents away. In fact, did you know that he did so that same afternoon?

Mr. ADAMS. As a matter of fact, Mr. Margolis said it was fine with him, let the attorney do so.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Mr. Adams, you've had some considerable experience at the Department of Justice considering and wrestling with questions of ethics. Is that so?

Mr. ADAMS. I've had some experience giving advice about conflict of interest and that sort of ethics to attorneys in the Criminal Division, yes.

Mr. BEN-VENISTE. Without being overly modest, for a period of years were you not the principal person designated to give advice to attorneys in the Criminal Division of the Department of Justice?

Mr. ADAMS. On Government ethics, yes.

Mr. BEN-VENISTE. Now, with respect to the Department of Justice's role in connection with the search for materials relating to Mr. Foster's suicide, is it correct, sir, that you never believed that you had the right to review those materials directly?

Mr. ADAMS. I think that's correct. I don't think we had any legal tool that we could have pulled out and demanded to see the documents right there.

Mr. BEN-VENISTE. So weighed against Mr. Nussbaum's stated concerns about executive privilege, attorney-client privilege and privacy rights of the Foster family, in terms of whether the Justice Department had any rights that could have been expressed in either a search warrant or subpoena for those records, you were of the view that the Department had no legal right to look at the documents. Is that so?

Mr. ADAMS. We definitely had no ground for a search warrant. I've not fully considered whether or not we had legal ground for a Grand Jury subpoena. That certainly would have been an extraordinary step. It was never really considered that we would do that.

Mr. BEN-VENISTE. I won't pursue the reasoning, then, with you at this point. But what concerned you and Mr. Margolis, if I understand your testimony and your position, and that of Mr. Heymann, who will be a witness here next week, was that here you were called in, sitting in the office and a suggestion might be made that you had some role in supervising the search, whereas, in fact, you really were not supervising the search?

Mr. ADAMS. We definitely were not supervising the search. We were concerned that we would be unfairly, inaccurately characterized as supervising the search. We were also concerned with the appearances of the search, the way it was conducted by Mr. Nussbaum.

Mr. BEN-VENISTE. Indeed, is that not the concern that grounded Mr. Margolis' comment to Mr. Nussbaum that he was making a big mistake, that the appearance of the White House Counsel taking

the sole responsibility to conduct this search was, in Mr. Margolis' view, and I take it your view as well, not the best course to follow from an appearance standpoint?

Mr. ADAMS. That was my view. I think that was probably the reason Mr. Margolis made the statements he did, yes.

Mr. BEN-VENISTE. Now, Mr. Adams, let's go to the question of the scope of the search. You've indicated that you were looking for a suicide note or other evidence that would explain Mr. Foster's emotional state at the time of his death; is that correct?

Mr. ADAMS. Yes.

Mr. BEN-VENISTE. Is it also correct that you were not concerned about looking at Mr. and Mrs. Clinton's personal tax file, their real estate investment, the blind trust or a host of other substantive files that were in the office?

Mr. ADAMS. That's correct. We had little interest—or no interest, I should say—in anything that didn't appear to be relevant to a suicide investigation, such as a note or evidence that Mr. Foster was being blackmailed, evidence that he was a victim of a crime, something like that, something that would explain why a man like Mr. Foster would take his own life.

Mr. BEN-VENISTE. Even in the procedure that you had suggested to Mr. Nussbaum on the 21st, you would only be making a cursory look at this material to determine whether it fit into the scope of what you have just described would be of interest to you?

Mr. ADAMS. The agreement we reached with Mr. Nussbaum on the 21st was that Mr. Margolis and myself, in conjunction with Mr. Nussbaum, would make that cursory examination of each document to determine if it was of interest relevant to the suicide investigation.

Mr. BEN-VENISTE. So that was the understanding as matters existed on the 21st. On the 22nd, Mr. Nussbaum said that he and he alone was going to conduct that review. Correct?

Mr. ADAMS. That's correct.

Mr. BEN-VENISTE. That's where it was Mr. Margolis' view that he was making a mistake from the standpoint of the appearance that this would cause?

Mr. ADAMS. Yes, Mr. Margolis expressed that view both on the morning of the 22nd when Mr. Nussbaum first announced his change in plan, and he repeated it in the afternoon before Mr. Nussbaum began his search.

Mr. BEN-VENISTE. Now, having that in mind, you understood, did you not, that Mr. Nussbaum had at least stated to you that he was going to go through each of the files that were in the office that day in your presence and to personally look at those files to determine in a brief and cursory way whether they fit into the category you were looking for?

Mr. ADAMS. That was what he ultimately said he was going to do, and that's what he ultimately did, yes.

Mr. BEN-VENISTE. Now, it was your understanding, was it not, that there were a quantity of files that related to the personal affairs of Mr. and Mrs. Clinton?

Mr. ADAMS. That's correct.

Mr. BEN-VENISTE. The fact that those files were in Mr. Foster's office was not surprising to you, was it?

Mr. ADAMS. No, it was not.

Mr. BEN-VENISTE. Why was it not surprising?

Mr. ADAMS. My understanding of the way the White House Counsel's Office works is that there is a thin line between public and private affairs of the President, and it's certainly appropriate for the White House Counsel to be working on things like tax returns, blind trusts for the Clintons' assets, things like that.

Mr. BEN-VENISTE. With respect to the files that were in Mr. Foster's office, there wouldn't be anything wrong or impermissible were Mr. or Mrs. Clinton desirous of looking at those files?

Mr. ADAMS. There would be nothing impermissible with the President or Mrs. Clinton looking at the files that pertained to their own private affairs. If that's your question, then the answer is no, there's nothing impermissible.

Mr. BEN-VENISTE. I take it with respect to the public matters, the official matters that were reflected in Mr. Foster's files, President Clinton certainly would have no injunction against reviewing those files had he so cared to do so?

Mr. ADAMS. By the public matters, you mean——

Mr. BEN-VENISTE. The officials files?

Mr. ADAMS. —the general matters that the White House Counsel was working on, other than things that pertain to the Clintons personally?

Mr. BEN-VENISTE. Yes, including the things that pertain to Mr. and Mrs. Clinton personally.

Mr. ADAMS. Certainly the President would have had the right, had he so desired, if he wanted to look at anything going on in the White House Counsel's Office.

Mr. BEN-VENISTE. It was your understanding, was it not, that, following the review of the files, the personal files relating to Mr. and Mrs. Clinton would be sent by Mr. Nussbaum to the personal attorneys for Mr. and Mrs. Clinton?

Mr. ADAMS. That's correct.

Mr. BEN-VENISTE. Neither Mr. Margolis nor you voiced any objection to that. Isn't that so?

Mr. ADAMS. That's correct.

Mr. BEN-VENISTE. Senator Sarbanes, I'd like to cede the balance of my time to Mr. Kravitz.

Senator SARBANES. We'll use up this round with Mr. Kravitz for the other witnesses.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Agent Flynn, I'd like to begin with you, if I might. You testified previously that you attended a meeting late in the afternoon on July 21, 1993, in Mr. Nussbaum's office; is that correct?

Mr. FLYNN. That's correct, sir.

Mr. KRAVITZ. I believe you testified you were there in your role as a liaison or a facilitator for the officials from outside agencies?

Mr. FLYNN. Correct, sir.

Mr. KRAVITZ. You also attended a meeting earlier that day in Mr. Watkins' office at which some Park Police officials briefed the White House staff; correct?

Mr. FLYNN. Correct.

Mr. KRAVITZ. You were there in your role as a facilitator or liaison for the outside officials?

Mr. FLYNN. Correct, sir.

Mr. KRAVITZ. Now, at one or both of those meetings, you learned from White House officials that on the night of July 20, 1993, and possibly the early morning of July 21, 1993, Mr. Nussbaum, Patsy Thomasson, Maggie Williams and Betsy Pond all had been in Mr. Foster's office; is that right?

Mr. FLYNN. Correct.

Mr. KRAVITZ. So it's fair to say that there was no effort made to conceal the fact that those four White House officials had been in Mr. Foster's office?

Mr. FLYNN. That's correct, sir.

Mr. KRAVITZ. Agent Salter, I'd like to ask you some questions about your testimony relating to the briefcase and what Mr. Nussbaum did with it during the search on July 22, 1993.

Just to be clear, you were never able to see inside the briefcase at any time that afternoon; is that right?

Mr. SALTER. That's correct.

Mr. KRAVITZ. You demonstrated earlier how Mr. Nussbaum went about removing the files from the briefcase—and correct me if I'm wrong, but my memory of your demonstration was that the briefcase was down to Mr. Nussbaum's side; is that correct?

Mr. SALTER. Yes.

Mr. KRAVITZ. Mr. Nussbaum simply reached down and pulled out the files?

Mr. SALTER. Yes.

Mr. KRAVITZ. Mr. Nussbaum was talking to the people in the room at the time he did that?

Mr. SALTER. Yes, he was.

Mr. KRAVITZ. He wasn't looking in the briefcase, was he?

Mr. SALTER. I don't specifically recall him looking in the briefcase.

Mr. KRAVITZ. Now, you also testified earlier about what Mr. Nussbaum did at a later time. I think you testified about Mr. Nussbaum holding up the briefcase. Do you remember that testimony?

Mr. SALTER. Yes.

Mr. KRAVITZ. I'd like to direct your attention, if I could—do you have your deposition transcript with you?

Mr. SALTER. Yes.

Mr. KRAVITZ. If you would, I'd like you to open it up to page 193, and I'm going to read into the record some questions and answers from that deposition beginning at line 15 on page 193:

Question: Now, did Mr. Nussbaum actually say anything about the briefcase being empty or simply gesture?

Answer: I think he said that it was empty.

Question: You think he said that. Do you remember that?

Answer: Well, yes, I remember him saying—yes, I remember him saying—I don't know the exact words, but words to the effect that there is nothing further in the briefcase. It's empty. And I mean that—I don't mean to say that it was completely empty like it had been vacuumed up and 27 pieces of paper were not in there. I don't mean that. I mean it was empty that there were no further documents still in it.

Question: I guess that's an important distinction.

Answer: It is.

Question: Do you remember Mr. Nussbaum saying the word "empty," or could you remember him saying there are no more files in here or something to that effect?

Answer: I don't recall the exact words he used. I just recall that he said something and conveyed to us that there was nothing else in the briefcase to be looked at.

Question: After the time that Mr. Nussbaum took papers out of the briefcase for the second time, did you ever see Mr. Nussbaum actually look inside the briefcase?
Answer: No.

That was your testimony, sir, under oath in your deposition?

Mr. SALTER. Yes.

Mr. KRAVITZ. So it's true that Mr. Nussbaum did not look inside the briefcase after he had removed the files from it; correct?

Mr. SALTER. I did not see him look directly in the briefcase, no.

Mr. KRAVITZ. When you testified earlier in response to Mr. Chertoff's questions that you believed Mr. Nussbaum said something to the effect the briefcase is empty, what you meant to say was that Mr. Nussbaum simply indicated that there were no more documents or files in the briefcase; isn't that right?

Mr. SALTER. Yes. I meant to indicate that the documents, the files had all been taken out.

Mr. KRAVITZ. Mr. Nussbaum never told you or anyone else during that search on July 22nd that the briefcase was completely empty, did he?

Mr. SALTER. No.

Mr. KRAVITZ. Agent Salter, do you recall when Mr. Chertoff was asking Mr. Adams questions about the meeting in Mr. Nussbaum's office at the end of the day on July 21, 1993, and the discussion about the procedures that were to be followed the next day during the search? Do you remember Mr. Adams' testimony on that?

Mr. SALTER. Yes.

Mr. KRAVITZ. Mr. Chertoff asked you whether you had a similar understanding that the Department of Justice lawyers would be the ones reviewing the documents the next day during the search. Do you remember that question?

Mr. SALTER. Yes.

Mr. KRAVITZ. In fact, your understanding from that July 21, 1993 meeting in Mr. Nussbaum's office was exactly the opposite of Mr. Adams', wasn't it?

Mr. SALTER. I don't believe so.

Mr. KRAVITZ. Sir, didn't you testify in your deposition that your understanding, based on the meeting on July 21 in Mr. Nussbaum's office, was that the Department of Justice lawyers would play no role whatsoever in reviewing the documents the next day?

Mr. SALTER. I think I just testified that I didn't know the specifics of what role the Department of Justice attorneys would take. My understanding is that when it came down to reviewing the documents, that would be done by the investigators. As far as whether or not the Department of Justice lawyers would look at the top page—I wasn't aware of those details.

Mr. KRAVITZ. Let me read to you from your deposition transcript again, page 54, beginning on line 15. Again, this is your deposition from June 30, 1995, to this Committee.

Question: OK. Just, again, in an effort to maybe probe a little deeper, what understanding, if any, did you have about the role of Mr. Margolis and Mr. Adams in the review of the contents of Mr. Foster's office?
Answer: I don't think—my impression was that they would not have a role in actually conducting the review of the items in the office. Their role was to work out with the people at the White House, you know, the procedures on who we would have access to interview, and I don't really—at that time, I don't really think that they would have any role in the review of the office at all.

That was your testimony in your deposition, sir?

Mr. SALTER. Yes.

Mr. KRAVITZ. So your understanding was different from Mr. Adams' understanding, specifically your understanding was that the Department of Justice lawyers would not be reviewing the documents the next day; correct?

Mr. SALTER. I wasn't aware of the role that had been agreed on for the Department of Justice lawyers.

Mr. KRAVITZ. Agent Salter, I want to direct your attention to the investigation that you participated in conducted by the FBI at the direction of Mr. Heymann into the handling by White House officials of the note following its discovery. Do you understand?

Mr. SALTER. Yes.

Mr. KRAVITZ. You were one of the special agents from the FBI who participated in that investigation?

Mr. SALTER. Yes.

Mr. KRAVITZ. Along with a few other FBI special agents?

Mr. SALTER. There was an inspector from FBI headquarters who was in charge of it, and the case was assigned to me.

Mr. KRAVITZ. You and the other agents and inspectors interviewed several White House officials?

Mr. SALTER. Yes, we did.

Mr. KRAVITZ. One of the things that your investigation was looking into was whether anyone at the White House tried to conceal the existence of Mr. Foster's note from law enforcement officials; is that right?

Mr. SALTER. That's correct.

Mr. KRAVITZ. Both before and after the discovery of the note on July 26, 1993; correct?

Mr. SALTER. That's correct.

Mr. KRAVITZ. Now, you participated in the drafting and the issuance of a formal report that was given to higher-up officials at the FBI following that investigation; correct?

Mr. SALTER. That's correct.

Mr. KRAVITZ. That report concluded a number of things. First, it concluded that there was no evidence to contradict the report by Steve Neuwirth that he found the torn-up note in the bottom of Mr. Foster's briefcase on July 26, 1993; correct?

Mr. SALTER. Correct.

Mr. KRAVITZ. You also found and concluded in your report that there was no evidence to suggest that the torn-up note was somewhere other than the bottom of Mr. Foster's briefcase at the time of the search of the office on July 22, 1993; correct?

Mr. SALTER. That's correct.

Mr. KRAVITZ. Perhaps most important, you found and concluded in your report that there was no evidence to suggest that any White House official attempted or intended to conceal the torn-up note or its contents from law enforcement officials; is that right?

Mr. SALTER. That's correct.

Mr. KRAVITZ. Indeed, you concluded and you reported that the explanations for the delay in turning over the note to law enforcement officials between July 26 and July 27 were truthful and consistent?

Mr. SALTER. Yes, they were.

Mr. KRAVITZ. Now, just on the subject of your understanding on July 21 versus what Mr. Adams' understanding may have been that same day as to the procedures for the next day, you're certainly aware that there may have been discussions that Mr. Adams might have had with White House officials outside of your presence; is that correct?

Mr. SALTER. Yes, there were a number of discussions that I was not there for.

Mr. KRAVITZ. So the testimony you gave before was your understanding based on conversations you participated in?

Mr. SALTER. Yes.

Mr. KRAVITZ. As part of the FBI's investigation into the handling of the note, you interviewed Maggie Williams; correct?

Mr. SALTER. Yes, I did.

Mr. KRAVITZ. During that interview, Ms. Williams told you that she removed nothing from Mr. Foster's office on the night of July 20, 1993; correct?

Mr. SALTER. That's correct.

Mr. KRAVITZ. The night of Mr. Foster's suicide?

Mr. SALTER. Yes.

Mr. KRAVITZ. Now, you found Ms. Williams to be a truthful witness; isn't that right?

Mr. SALTER. Yes, I believe she was truthful.

Mr. KRAVITZ. Specifically, you found her truthful when she told you that she did not remove anything from Mr. Foster's office on the night of Mr. Foster's suicide?

Mr. SALTER. Yes.

Mr. KRAVITZ. You base that on your observations of Ms. Williams' demeanor during the interview; correct?

Mr. SALTER. Her demeanor during the interview and the information I got from other interviews.

Mr. KRAVITZ. In other words, the information that Ms. Williams gave you in her interview was consistent with information you learned from other witnesses you spoke with?

Mr. SALTER. Yes, it was.

Mr. KRAVITZ. I think that's all I have.

The CHAIRMAN. Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

I want to welcome all of you here and I appreciate your testimony. Mr. Adams, I appreciate your willingness to testify. I understand your birthday is on the 28th. I hope we can finish in time for you to be able to celebrate it.

Mr. ADAMS. I concur, Senator.

Senator HATCH. Frankly, I'm heartened by the White House decision this week to finally start down the road of cooperation with the Committee's investigation by releasing the papers that Mr. Kendall has, but that's only part of the papers. Now that they realize an attorney-client privilege doesn't apply, I really hope they realize that executive privilege doesn't either in this particular case, and I think the White House should move quickly to make available the other Whitewater documents in their possession because, as I understand it, the agreement does not cover documents found

in Vince Foster's office that were not transferred to the law firm of Williams & Connolly, but were instead kept by the White House, and these may include—in fact, they would include documents Mr. Hubbell maintained as well. So I hope that they'll consider that as well.

I want to ask you a few questions. Frankly, let me take you back to the morning after Mr. Foster passed on. After you arrived at work that morning, you had a conversation with Phil Heymann, at that time a high Department of Justice official; right?

Mr. ADAMS. That's correct. Mr. Heymann was Deputy Attorney General.

Senator HATCH. As I understand it, Mr. Heymann told you to go to the White House to join the Park Police to conduct a search of Mr. Foster's office; right?

Mr. ADAMS. That's correct, yes, sir.

Senator HATCH. Now, your response was you were concerned about going there alone. Is that a fair way to characterize it?

Mr. ADAMS. I was concerned about going at all because——

Senator HATCH. At all, but certainly alone?

Mr. ADAMS. Yes.

Senator HATCH. You were sensitive to the appearance that a conflict might exist because you had formerly worked at the White House?

Mr. ADAMS. Briefly on a temporary detail, yes, sir.

Senator HATCH. Right. I think that's an admirable position to take. So you had David Margolis accompany you to the White House; right?

Mr. ADAMS. I raised the issue with Mr. Heymann——

Senator HATCH. That's who he assigned?

Mr. ADAMS. —and Mr. Heymann then assigned Mr. Margolis to go.

Senator HATCH. The Park Police are not a part of the Justice Department; right?

Mr. ADAMS. That's correct.

Senator HATCH. Mr. Heymann wanted you to go to the White House to assist the Park Police in their investigation basically because he was concerned that the White House might interpose objections to the Park Police conducting that search; right?

Mr. ADAMS. He was concerned that the White House might interpose objections of privilege, and he wanted someone from the Justice Department there to be involved in addressing those issues, yes.

Senator HATCH. OK. So you knew you would be assisting the Park Police in conducting the search of Mr. Foster's office?

Mr. ADAMS. Let me just correct that, Senator. I think we would not be physically conducting the search——

Senator HATCH. But you would be there and you would be observing what went on?

Mr. ADAMS. We would be there and aware of what was going on, yes.

Senator HATCH. Right. As I understand it, in earlier testimony today you indicated that you had a gentleman's agreement with Mr. Nussbaum to review the documents together?

Mr. ADAMS. Yes. The agreement was that Mr. Margolis and myself, together with Mr. Nussbaum, would look at least at the title of each document or the first——

Senator HATCH. Right. You would look at the title and maybe the first page to determine whether it was privileged or whether it was not, whether it was private papers or whether it was not, whether the documents were pertinent to this investigation or not?

Mr. ADAMS. Yes, although our analysis was probably just the reverse. It was going to be to determine relevance first and then——

Senator HATCH. Sure. I understand that.

Mr. ADAMS. —the other issues after that.

Senator HATCH. When you conduct such reviews, do you normally put those particulars in writing or do you have a so-called gentleman's agreement between the parties? That's what you had here, I take it?

Mr. ADAMS. This was—I would characterize it as a unique situation. It never occurred to us to get anything more than the understanding, an oral understanding.

Senator HATCH. I'm not criticizing here. Are you aware of the fact that Mr. Nussbaum basically disputes the existence of that oral agreement?

Mr. ADAMS. I'm not aware of that. I've read some press account that that may be the case.

Senator HATCH. I see. But you do assert that that's what was agreed to?

Mr. ADAMS. It's my understanding, yes, sir.

Senator HATCH. OK. Why were you concerned about the appearance of the search?

Mr. ADAMS. Because it is just not necessary to raise questions where no questions need be raised. We thought that if the White House officials determined these questions themselves, there would be public criticism, perhaps press criticism, that they had done so improperly. They could simply avoid issues like that by allowing people such as Mr. Margolis and myself to assist in that determination.

Senator HATCH. Sure. Mr. Ben-Veniste asked you whether you were interested in the Clinton's personal papers, and you said no; right?

Mr. ADAMS. That's correct.

Senator HATCH. But you didn't know which were and which were not personal papers because you weren't allowed to look through them; right?

Mr. ADAMS. That's correct. We never actually saw them.

Senator HATCH. You were prohibited from determining which were personal, which were privileged, which were relevant to this investigation?

Mr. ADAMS. We had Mr. Nussbaum's word for what they were. We didn't actually see them.

Senator HATCH. You had no other choice under those circumstances other than to take Mr. Nussbaum's word that he was making the appropriate distribution?

Mr. ADAMS. That's right. We had to——

Senator HATCH. What did he have, three piles or more piles on the desk as he went through the papers that you observed?

Mr. ADAMS. He had three piles, Senator.

Senator HATCH. Which were the largest piles, the ones that were relevant or the others?

Mr. ADAMS. I cannot recall which were the larger. The best I can recall, there were a number of documents, as one would expect, that were material that was going to be redistributed to other attorneys in the White House Counsel's Office.

Senator HATCH. There's a real question over what papers, if any, should have been removed without having been examined, at least for relevance, by an independent examination, which is what you and Mr. Margolis were there for; is that correct?

Mr. ADAMS. That's what Mr. Margolis and I thought we would be able to do.

Senator HATCH. That's your contention?

Mr. ADAMS. Yes.

Senator HATCH. I think that's right. Who else was present there with Mr. Nussbaum?

Mr. ADAMS. During the——

Senator HATCH. During the time you were there?

Mr. ADAMS. During the search on the 22nd?

Senator HATCH. Sure.

Mr. ADAMS. Agent Salter was there. Mr. Spafford, the attorney for the Foster family, was there. Detective Markland from the Park Police was there. I believe there was another FBI agent there. I believe there was another Park Police officer there.

Senator HATCH. Back to that oral agreement, Mr. Ben-Veniste brought out and your deposition says that when Mr. Nussbaum said he was going to make this determination, Mr. Margolis said, and I quote, that he was "making a big mistake" in altering your oral agreement; is that a fair characterization?

Mr. ADAMS. Yes, it is.

Senator HATCH. Did you think at the time Mr. Nussbaum was making a mistake in not upholding that oral agreement?

Mr. ADAMS. Yes, I did.

Senator HATCH. OK. Why?

Mr. ADAMS. Because, as I've just testified, Senator, it was going to raise unnecessary questions. There would always be questions about whether it had been done correctly, properly, if the only people who examined the documents were people in the White House.

Senator HATCH. Exactly what's happening in this investigation?

Mr. ADAMS. In a sense, yes.

Senator HATCH. Not in a sense. Exactly; right?

Mr. ADAMS. Probably.

Senator HATCH. Approximately how much time elapsed between the time you met Mr. Nussbaum and the time the document review proceeded?

Mr. ADAMS. On the 22nd?

Senator HATCH. Yes.

Mr. ADAMS. 2½ hours, as best I can recall.

Senator HATCH. Approximately 2½ hours?

Mr. ADAMS. Yes, sir.

Senator HATCH. When you returned to Mr. Nussbaum's office, who was there then?

Mr. ADAMS. I thought that was a question you had asked——

Senator HATCH. So you answered it——

Mr. ADAMS. The meeting with Mr. Nussbaum previously—I want to make this absolutely clear—that was just with Mr. Margolis and myself. The meeting that was at approximately 10 a.m. on the 22nd was just with Mr. Margolis and myself.

Senator HATCH. Now, if I understand it correctly, he separated and made the determinations, and you expressed in response to questions here that you were in favor of personal documents being given to the President?

Mr. ADAMS. Right. Documents that were personal legal matters he was working on for the President and Mrs. Clinton, I did not have any objection to them being——

Senator HATCH. But you did not favor this no-look policy that Mr. Nussbaum implemented at that time?

Mr. ADAMS. That's absolutely correct, yes.

Senator HATCH. The reason you didn't is because you would have to take his word for it and there would be no independent review of it and nobody would really know whether they were purely personal documents or documents that really belong, from a relevance standpoint, in this investigation or in any investigation?

Mr. ADAMS. We would just have Mr. Nussbaum's characterization of the documents.

Senator HATCH. Was my characterization in that last question correct?

Mr. ADAMS. Could I have the last question repeated, please?

Senator HATCH. I'm not sure I can.

Mr. ADAMS. Maybe the stenographer could.

Senator HATCH. Would you mind repeating it?

[The reporter read the record as requested.]

You did well. I speak pretty fast.

That's a fair characterization, isn't it?

The CHAIRMAN. Let's get you back the mike.

Mr. ADAMS. That probably is a fair characterization. We would just have to take his word for whether or not there was—particularly, what we were concerned with was relevance to the suicide investigation. We would have to take his word for that.

Senator HATCH. Thank you. On your notes that you prepared, I just want to read one part of it. It's in the middle of that second paragraph. It states:

> As an example of the clarity of this agreement, Mr. Neuwirth, at one point, apparently trying to summarize it, said that Bernie would look at each document and determine privilege. If he determined no privilege, it could be shown to the law enforcement officers. He was immediately corrected and Mr. Nussbaum agreed that the Justice Department representatives would see the documents to determine privilege. The next morning, however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide privilege issues himself.

That's still accurate?

Mr. ADAMS. Yes, sir.

Senator HATCH. You're sure of that. OK. In fact, they seem to be so jumpy—we had brought out what happened with Mr. Salter, that he stood up at one point and they accused him of trying to look at the documents. You didn't consider that a joke, did you?

Mr. ADAMS. Mr. Nussbaum did not accuse Mr. Salter of trying to look at the documents. That was Mr. Sloan.

Senator HATCH. That was Mr. Sloan. But your characterization of that was in that particular setting the remark was, to put it charitably, extremely offensive?

Mr. ADAMS. That was my characterization. Yes.

Senator HATCH. One other thing. As I understand it, Mr. Nussbaum stated that some of the documents in Mr. Foster's office involved the President and Mrs. Clinton's personal legal affairs; is that correct?

Mr. ADAMS. That's correct, yes.

Senator HATCH. He also had a computer in his office; correct?

Mr. ADAMS. That's correct.

Senator HATCH. You asked for an opportunity to look at the computer. Were you given that opportunity?

Mr. ADAMS. We asked for the opportunity. Mr. Nussbaum said no, he was not going to turn on the computer.

Senator HATCH. He would not turn it on and review any of the computer files in your presence; right?

Mr. ADAMS. That's right, and he said that there were two reasons for that. He said, one, there might be privileged material on there he didn't want us to see. Reason number two was he said Mr. Foster rarely used his computer. He doubted there would be much of anything on there anyway.

Senator HATCH. Now, as I understand it, Mr. Margolis didn't like that, and he did not appear pleased. In fact, isn't it true that he said something to the effect that if this had been IBM or Xerox, he might be able to get a Grand Jury subpoena and force a look at the computer?

Mr. ADAMS. To the best of my recollection, that statement was made by Mr. Margolis at the very end of the meeting. It was not a particular reference to the computer.

Senator HATCH. But he was not happy?

Mr. ADAMS. He was not happy with the way the search had been conducted, no, he wasn't.

Senator HATCH. Neither you nor Mr. Margolis nor anybody from the Department of Justice or even the Park Police, to your knowledge, had any opportunity to review those computer files; is that right, or anything that was on that computer?

Mr. ADAMS. I never did. I don't know whether they were ultimately made available to anybody else or not.

Senator HATCH. You have no idea what those computer files actually contain; right?

Mr. ADAMS. I don't, but I remember Mr. Nussbaum saying that he doubted there was much of anything on there anyway because Mr. Foster barely used his computer.

Senator HATCH. You don't personally know whether there was or was not?

Mr. ADAMS. I do not know.

Senator HATCH. Did you really feel that the White House had cooperated with you during that particular time you were with them?

Mr. ADAMS. I felt Mr. Nussbaum had changed the agreement we had with him the previous day.

Senator HATCH. Have I gone over a little bit?

The CHAIRMAN. You have, but we'll come back to this, Senator.

Senator HATCH. If I could have just another second or two. I'd just like to——

Senator SARBANES. Go ahead.

The CHAIRMAN. Sure, go ahead. Certainly. Senator Sarbanes has agreed, so why don't you——

Senator HATCH. OK. I'll let it go at that. That's——

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I'm going to yield to Senator Kerry.

Mr. Adams, is it fair to say that Mr. Nussbaum, in effect, rebuked Mr. Sloan for that comment that you found offensive?

Mr. ADAMS. I do not recall, Senator, what Mr. Nussbaum said in response to that. I've heard it described a couple of times today, but I have no independent recollection of what Mr. Nussbaum did at that point.

Senator SARBANES. You don't have any recollection that he, in effect, put Sloan down for that?

Mr. ADAMS. I'm sorry, I just don't recall what Mr. Nussbaum——

Senator SARBANES. But we do have testimony from others to that effect. In fact, I think, Mr. Salter, you indicated as much yourself?

Mr. SALTER. Yes, I did.

Senator SARBANES. You were the one who was the subject of this statement from Sloan?

Mr. SALTER. That's correct.

Senator SARBANES. I think also Mr. Spafford earlier today indicated the same thing.

Mr. SALTER. I think he did.

Senator SARBANES. Senator Kerry.

Senator KERRY. Thank you very much, Senator Sarbanes.

Mr. Adams, I appreciate your testimony here today and I appreciate all of you coming in. Obviously, we are trying to sort out months later who said what to whom and whose observations were accurate and, as all of you know, if you sat around the dinner table and whispered a comment, you would have a whole new story by the time it gets around the table. We've all played that game and it happens. So it's hard for us to try to sort through it.

I want to try to pin you down here, not as a matter of doubting what you've said, but simply to try to elicit a little more exactness to what may or may not have happened and transpired.

You're a lawyer of great reputation, Mr. Adams, and I have no reason, particularly given your ethics leadership at the Department and elsewhere, to question you. What I want to try to find out is whether there's room here or not—literally, as a matter of trying to establish fact—for some confusion. I want to go back to the agreement discussion.

You had the discussion with Mr. Margolis present, I gather, in Mr. Nussbaum's office with Mr. Neuwirth present?

Mr. ADAMS. And several other people present, yes.

Senator KERRY. Several other people were present. Who was the first person to summarize the agreement? Did you summarize the agreement to Mr. Nussbaum or did Mr. Nussbaum summarize the agreement to you?

Mr. ADAMS. I cannot recall how the conversation went. I can recall that Mr. Margolis did virtually all of the speaking for the Justice Department and for the law enforcement agencies there. I'm

sorry, I just cannot tell you how the conversation went. I can tell you my characterization of it was it was friendly, it was not confrontational. The agreement on the procedure that I have described was reached relatively quickly with no real debate, as best I can recall, about how—at most, it was just friendly discussion. But I cannot——

Senator KERRY. Did some conversation continue at some point? Did Mr. Nussbaum leave at the end and there was still a little conversation going on about the substance of the meeting?

Mr. ADAMS. Mr. Nussbaum left at the end and there——

Senator KERRY. Or did everybody leave at the same time? Were all parties present when the meeting broke up, essentially?

Mr. ADAMS. It's certainly my recollection that the meeting broke up and we all departed. I mean, the meeting was in Mr. Nussbaum's office. I don't recall Mr. Nussbaum leaving the meeting at any time, no.

Senator KERRY. The reason I'm asking this is that in your deposition—there's differences of opinion here, and I'm trying to sort through them. In your deposition, on page 36, you recount how Mr. Neuwirth during the meeting expressed a contrary point of view about the meaning, if you will, of the agreement.

My question is, is it possible that, in fact—as can often happen when people are making agreements—people left with a different sense of what had been agreed upon?

Now, Mr. Neuwirth says "he expressed a point of view"—this is you testifying. You're saying that "he was attempting to summarize the agreement or attempting to change the agreement after Bernie had stated it as I have stated it. Neuwirth stated that OK, Bernie will look at the documents and determine privilege and that will be the way we proceed. I think both David Margolis and I corrected him and said no, that was not our understanding."

Clearly, he had a different view as to what the agreement was, and all I'm trying to get at here is was that resolved?

Mr. ADAMS. He may have had a different understanding midway through the meeting when he made that statement. I think it was resolved and I think it was resolved very, very clearly and his mischaracterization of the agreement that we had just reached leads to that conclusion on my part, that he had stated the agreement contrary to what Mr. Nussbaum and Mr. Margolis and myself had just worked out. We corrected him and so that——

Senator KERRY. Did Bernie respond to your correction, do you recall?

Mr. ADAMS. I don't recall what he said, no.

Senator KERRY. You don't recall? Again, I'm not looking for—I mean, is it possible that Bernie thought he said one thing, Neuwirth interpreted for him, and, in effect, that they departed the meeting without the meeting of the minds that you've described?

Mr. ADAMS. I don't know what was in Mr. Nussbaum's or Mr. Neuwirth's mind. I know what was in my mind, and that was the agreement as I've described before you several times. It was certainly my understanding that that was also Mr. Nussbaum's understanding of the agreement when we left on the afternoon of the 21st.

Senator KERRY. The next morning when you came back, did Mr. Nussbaum say something to you, in effect saying sorry, folks, the agreement is changed, or did he simply say we're going to proceed as I understand we had agreed on yesterday?

Mr. ADAMS. I don't think it was either extreme. I think he said something like this is the way we're going to do it. It was contrary to the agreement that we had reached the day before.

Senator KERRY. Contrary to your understanding of the agreement at least?

Mr. ADAMS. Yes. Contrary to my understanding and contrary to what I thought he understood——

Senator KERRY. I'm not arguing with you. I think it's perfectly fair that you had the understanding you had. In fact, I think it would have been a hell of a lot better if it would have proceeded that way, obviously, in retrospect. So I'm not trying to suggest that—I'm just trying to find here whether or not—because of your own summary of how Mr. Neuwirth saw it and his own deposition and Mr. Nussbaum's deposition, where each of them is arguing that they had a different view of what the agreement was—whether or not there was a different sense of what had been agreed upon. Let's leave that aside.

Let's make an assumption for a moment that yours was the agreement, and that you were coming back there with a view that you were going to proceed with some kind of review. Help me to understand why that particular kind of review was essential in light of the fact that you certainly agree that these were all legitimate White House documents, some of which were personal documents, some of which certainly, under your interpretation, could have been reviewed by the Clintons or by their lawyers or by anybody as a matter of privilege; correct?

Mr. ADAMS. The Clintons certainly could have reviewed their own legal documents in the Counsel's Office.

Senator KERRY. You had no problem, I understand it, with the notion of whatever files were personal going to their personal attorney, wherever that might be?

Mr. ADAMS. That's correct, because we thought it highly unlikely that those files would have anything to do with the suicide investigation.

Senator KERRY. So the key to you was to make a screening to determine what did or didn't have to do with the suicide?

Mr. ADAMS. Yes.

Senator KERRY. Now, I want to understand that procedure. Was it the Department of Justice position, your position particularly, and Mr. Heymann's, I believe, as we've seen, that it was necessary to actually view the text to some degree to make a proper determination that, in fact, it wasn't an extortion potential or criminal potential and, therefore, a potential cause of suicide, or were you more interested, as, to a certain degree, your own memo says, "with the issue of independent appearance"? Was this form or substance or both?

Mr. ADAMS. It was a little bit of both. We didn't intend for any delving into the substance of the documents. We intended that we would look at each document or each file to the extent necessary to see what it actually was. We expected that with the vast major-

ity of them it would be very easy to see that the document or the file had nothing to do with the suicide investigation, in which case we were not interested in it, we would not have suggested that it would be of interest to the law enforcement agencies.

Senator KERRY. So, in effect, you felt it was important for you to screen visually a particular note; is that correct?

Mr. ADAMS. That's correct, yes, at least enough to determine what it was. For example, by looking at the title of each document, maybe a quick scanning of the first page, something like that.

Senator KERRY. Now, if I can just take a moment longer, given the fact that this was a suicide inquiry, and that was the only thing in anybody's mind, was there a particular reason why White House Counsel's judgment as to that would be deemed insufficient other than the view of independence?

Mr. ADAMS. Probably not, although at the time—I mean, everybody was of the opinion that it was very, very likely that it was a suicide. But there hadn't been a suicide note found. There hadn't been anything else found that would indicate a suicide. So there was still a slightly open possibility that it might have been something else.

Senator KERRY. Well——

Mr. ADAMS. No one took that very seriously.

Senator KERRY. As a former prosecutor, I certainly understand it. I must say to you, in my own judgment everybody would have been a lot better off if your judgment, Mr. Heymann's judgment, had been given more weight, I think, under those circumstances.

Were you angry in any way, did you feel at that point wait a minute, something's happening here that is dangerous, untoward or problematical in some way?

Mr. ADAMS. I was upset because I thought that Mr. Nussbaum was making a big mistake that he didn't need to be making. I didn't have the impression that evidence was being destroyed or anything like that. I was just very disappointed that he hadn't carried out the agreement that we had reached the day before.

Senator KERRY. Was it because, in a sense, you foresaw the very kind of inquiry that we're involved in or the kinds of questions——

Mr. ADAMS. That's correct, yes, we did.

Senator KERRY. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Adams, the next week after this, Mr. Heymann directed you to write down that two-page summary of what had occurred on the 22nd; right?

Mr. ADAMS. That's correct, yes.

Mr. CHERTOFF. That was, of course, after the note had finally been released to the Justice Department on the 27th; right?

Mr. ADAMS. I'm not positive of the date the note was released to the Justice Department. I was not present when that happened. He directed me to write the memo after the note had been discovered, yes.

Mr. CHERTOFF. That was because he indicated he had concerns about the way the White House had handled it; right?

Mr. ADAMS. That's correct.

Mr. CHERTOFF. In fact, the following year, shortly before Mr. Heymann left, after he indicated he was going to resign, he had

you and Mr. Margolis and a couple of other people come in and actually memorialize the events of July 20th through July 30th so that there would be a record of it; right?

Mr. ADAMS. We had some meeting shortly before Mr. Heymann left in which we discussed the events of July 1993. I don't know if there was any writing that was produced out of that meeting. He didn't direct me to do that and, if there was such a writing, I don't think I've ever seen it.

Mr. CHERTOFF. Were you aware that he took some notes down of that meeting in February 1994?

Mr. ADAMS. I don't recall whether he did or not.

Mr. CHERTOFF. Did you know his special assistant took notes down of that meeting?

Mr. ADAMS. I recall a meeting. I just don't recall the details.

Mr. CHERTOFF. Did you understand it was something that he felt was important enough that 9 months after the event, on the eve of his leaving the Department of Justice, he collected the relevant people and had them sit down and discuss and collect the relevant information? You knew that much; right?

Mr. ADAMS. He did do that, that's correct.

Mr. CHERTOFF. Now, let me ask you, Agent Salter, you were asked a question by Mr. Kravitz concerning your investigation about the visitations to Mr. Foster's office on July 20, 1993. You remember that?

Mr. SALTER. Yes.

Mr. CHERTOFF. He asked you to offer your opinion as of that time about Margaret Williams' credibility?

Mr. SALTER. Yes.

Mr. CHERTOFF. That's the Chief of Staff to the First Lady?

Mr. SALTER. Yes.

Mr. CHERTOFF. When did you do that investigation?

Mr. SALTER. That was started on July 27th, I believe, and it finished on approximately August 8th.

Mr. CHERTOFF. Of 1993?

Mr. SALTER. Yes.

Mr. CHERTOFF. So it was within a week or so after the events; right?

Mr. SALTER. Yes.

Mr. CHERTOFF. Did you interview Officer Henry O'Neill?

Mr. SALTER. No, I did not.

Mr. CHERTOFF. So you didn't have the benefit of his testimony?

Mr. SALTER. No, I did not.

Mr. CHERTOFF. Or his interview; correct?

Mr. SALTER. That's correct.

Mr. CHERTOFF. So when you said you made an assessment of credibility because the stories were consistent, that was not an interview that the FBI was aware that they had to make; right?

Mr. SALTER. That's correct.

Mr. CHERTOFF. Did anyone at the White House when you went to do this investigation give you a record or a log or any indication of who at Secret Service was in the vicinity of Mr. Foster's office on the night of the 20th?

Mr. SALTER. I talked to a couple of Secret Service officers who were in the area, but I did not get a comprehensive list of everybody that was present.

Mr. CHERTOFF. Did you have a list of who opened and closed the door to the White House Counsel's suite on the 20th?

Mr. SALTER. No, I don't believe so.

Mr. CHERTOFF. So you were not given information so you could locate Mr. O'Neill?

Mr. SALTER. That's correct. I wasn't aware that he had a statement to add.

Mr. CHERTOFF. Now, let me turn to another investigation that you also did in July or August 1993 and this was also, I guess, ordered by the Deputy Attorney General about the finding of the note?

Mr. SALTER. Yes.

Mr. CHERTOFF. I believe you were asked some questions about that concerning your final report on that investigation indicating there was no evidence to contradict Stephen Neuwirth's statement that the note was first found on the 26th. You remember giving that answer?

Mr. SALTER. Yes.

Mr. CHERTOFF. Did you have at that time access to evidence or—let me withdraw the question.

Did you have at that time evidence that someone present in the room on the 22nd had seen Mr. Sloan holding the briefcase open and telling Mr. Nussbaum there were torn-up pieces of paper in the bottom of the briefcase?

Mr. SALTER. I was not aware of that information.

Mr. CHERTOFF. You did not have that?

Mr. SALTER. No, I did not.

Mr. CHERTOFF. As a matter of fact, didn't Mr. Sloan tell you to the contrary that he didn't notice if there were any items remaining in the briefcase?

Mr. SALTER. Yes, he did.

Mr. CHERTOFF. Let me get you, if I can, a copy of your interview report. It's FD 302. It's FBI 37. We'll put it up.

Mr. SALTER. I have it here.

Mr. CHERTOFF. You have a copy of it?

Mr. SALTER. I do.

Mr. CHERTOFF. If we can get a little bit better focus on the Elmo.

Would you kindly read us the paragraph there from the interview that took place with Mr. Sloan on August 2, 1993?

Mr. SALTER. The paragraph on page 2?

Mr. CHERTOFF. Right.

Mr. SALTER. It says:

> Sloan advised that he was not surprised that the note was located in the bottom of the briefcase even though the briefcase had been previously emptied and its contents inventoried. Sloan recalled that after the briefcase was emptied by Nussbaum and the contents reviewed, the empty briefcase was placed on the floor at the spot where he [Sloan] was standing. However, Sloan did not notice if there were any items remaining in the briefcase because he 'did not look after every detail.' Sloan was not aware of any other notes left by Vincent Foster which would be relevant to the investigation of Foster's death. Sloan was also unaware of any circumstances regarding the location of the note in question other than the version given by Stephen Neuwirth.

Mr. CHERTOFF. This was given after July 22nd, the date on which we've heard testimony from Mr. Spafford today that Mr. Sloan himself called attention to torn-up paper at the bottom of the briefcase. You didn't have Mr. Spafford's testimony at the time you closed the investigation in early August 1993, did you?

Mr. SALTER. That's correct.

Mr. CHERTOFF. Now, let me go to the question of the events in the office during Mr. Nussbaum's review on July 22nd. Let me ask you first, Mr. Adams. Essentially what Mr. Margolis was telling Mr. Nussbaum when he reversed the agreement on the morning of the 22nd is it would look bad, it would not look good if independent lawyers from Justice were not permitted to be involved in the process of determining relevancy and privilege; correct?

Mr. ADAMS. That's correct, yes.

Mr. CHERTOFF. It wasn't because Mr. Margolis was concerned about public relations; correct?

Mr. ADAMS. It was probably largely that, yes.

Mr. CHERTOFF. Isn't he really concerned about the appearance of propriety, the appearance that things are being done properly?

Mr. ADAMS. He was concerned about the appearance of things being done properly. Public relations would be one of the reasons why he would have that concern, yes.

Mr. CHERTOFF. Also because there is such a thing called the appearance of propriety; right?

Mr. ADAMS. That's correct.

Mr. CHERTOFF. That's an ethical concept; right?

Mr. ADAMS. It probably is, yes.

Mr. CHERTOFF. In fact, Mr. Margolis essentially warned Mr. Nussbaum, don't do it the way you're going to do it, it's only going to cause a problem; right?

Mr. ADAMS. He did make such a warning to Mr. Nussbaum.

Mr. CHERTOFF. Mr. Nussbaum went ahead and did it anyway?

Mr. ADAMS. That's correct.

Mr. CHERTOFF. Made aware of the risks involved in proceeding on the course he had chosen; right?

Mr. ADAMS. He was certainly aware of what Mr. Margolis had told him, yes.

Mr. CHERTOFF. Now, I know you don't have the benefit of having seen the documents that we're all talking about. We know more than you do, which puts you at a disadvantage. You've given us some sense of what you might have thought was important or not. You would agree with me that, first of all, as of the 22nd there was no conclusive determination of suicide; right?

Mr. ADAMS. Not absolutely conclusive. I don't think there was any indication, though, otherwise and certainly everyone involved was very confident it was a suicide.

Mr. CHERTOFF. Although Mr. Margolis raised the issue in the meeting of the 22nd that the absence of a note was one loose end; correct?

Mr. ADAMS. I've heard previous witnesses describe that. I don't have any independent recollection of Mr. Margolis making that statement. He may have.

Mr. CHERTOFF. Even to the extent you were operating on the working assumption it was a suicide, which I think we now know

to be true, you understood, because you were dealing with a high Government official, that you needed to look for more than a note; correct?

Mr. ADAMS. We were looking for more than a note. I'm not sure if that was just because he was a high Government official or not. We were looking for a note, which is what one normally thinks of in a suicide case. We were also looking, as I've testified earlier, for other things that might indicate why he committed suicide, such as that he was being blackmailed, that he was the victim of a crime, things like that.

Mr. CHERTOFF. Or that there was some sort of scandal that he was having difficulty handling; right?

Mr. ADAMS. That really never crossed my mind.

Mr. CHERTOFF. I'm going to have to refresh your mind with page 45 of your deposition. If we can get a copy of that to the witness. Do we have a copy of that?

Mr. ADAMS. I don't have a copy of that with me, no.

Mr. CHERTOFF. We'll get it to you in a moment. I know you've had an opportunity to review your deposition; right?

Mr. ADAMS. Yes, I have. I just don't have it with me.

Mr. CHERTOFF. Let me read it to you. It's page 45, line 4:

Question: Did you discuss with David Margolis what would be relevant in your search and review of documents and materials in Mr. Foster's office the next day?
Answer: As best I can recall, we probably talked about looking for a suicide note or some indication that—of something that would cause him to commit suicide. Either some sort of a scandal he couldn't handle, extort—somehow he had been the victim of extortion, things like that, the normal things one would think that would cause a successful fellow like Mr. Foster to commit suicide.

Does that refresh your memory that looking for some sort of a scandal he couldn't handle was one of the things you would want to have an eye peeled for?

Mr. ADAMS. Yes, it refreshes my memory and it makes me think of exactly what I had in mind. By "a scandal" I had in mind—trying to put it delicately, but now it's impossible to do that—the possibility that he was a homosexual, that scandal pertained to some sort of a scandal pertaining to Mr. Foster. I state I have absolutely no indication that any of those things were possible, I'm just—excuse me. I just want to clarify that is what I had in mind by the use of the term "scandal."

Mr. CHERTOFF. I don't want to cause you to speculate about nonexistent scandals.

The CHAIRMAN. Now, look. Let the record be very, very clear. There has been nothing said to indicate any of that. What you are saying, Mr. Adams, is that in typical cases where there is a suicide, you look for all possibilities. That might include something that might be embarrassing and that's why you want access to the papers dealing with where he might have been. There is absolutely nothing in this situation that indicates that this was the case. We understand that. You are talking about various possibilities. So let's be careful because we want to be mindful of the family, please.

Mr. CHERTOFF. The point is, you are going with an open mind; right?

Mr. ADAMS. Yes, we were looking for anything that might shed light on why Mr. Foster killed himself.

Mr. CHERTOFF. Right. It's not like Alice in Wonderland: verdict first, trial afterwards. Here you want to look first and make a decision afterwards; correct?

Mr. ADAMS. We wanted to look first and make a decision afterwards, yes.

Mr. CHERTOFF. I take it it would have been of interest to you, for example, to see pages in Mr. Foster's own handwriting; right?

Mr. ADAMS. It would have been interesting to see, it would have been interesting and relevant probably to see pages in his own handwriting, yes.

Mr. CHERTOFF. So in giving examples of things that you're not interested in like tax returns or Government Printing Office documents, you would agree with me that at the other end of the scale things that would bear a closer look would be yellow paper in a folder that had a lot of Mr. Foster's own personal handwriting on it, that would bear a closer look?

Mr. ADAMS. Certainly. That description you just gave would be a likely description of a suicide note, or a note that would explain his state of mind would typically be in his own handwriting.

Mr. CHERTOFF. So you would want to take a look at that and maybe it would be relevant and maybe it wouldn't be; right?

Mr. ADAMS. Yes, I would have liked to have taken a look at that.

Mr. CHERTOFF. If you saw the words "can of worms," that might spur your interest further; right?

Mr. ADAMS. I'd have to see it in the context.

Mr. CHERTOFF. But you didn't get to see it, did you?

Mr. ADAMS. I didn't get to see any document that day that had the phrase "can of worms" on it, no.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I'm glad you made the statement you made. I think it's very important that—the Foster note ended up saying, "Here, ruining people is considered sport," and sometimes I wonder whether that sport continues even after they are dead.

Now, Agent Salter, I wanted to ask you, did you know that Mr. O'Neill has been interviewed by the FBI some four or five times?

Mr. SALTER. No, I was not aware of that.

Senator SARBANES. So you weren't involved in any of those interviews?

Mr. SALTER. No, and I believe those interviews were conducted by agents who worked for the Independent Counsel, and I was not involved in that investigation.

Senator SARBANES. I see. You have not seen those interviews?

Mr. SALTER. I have not.

Senator SARBANES. OK. The Committee has requested the reports of those interviews—the very report that was quoted, the interview with Cliff Sloan about which you were queried, we've asked for exactly those reports with respect to the interviews of Mr. O'Neill, the series of interviews that he had, apparently, with the FBI over a period of some months. We're going to renew our request to the Independent Counsel for those reports because we think they're obviously relevant to our inquiry.

I'm going to yield to Senator Simon. I just have this question.

Mr. Adams, on occasion a matter can be perfectly legal and perfectly ethical and still appear improper. Would you agree with that statement?

Mr. ADAMS. Possibly.

Senator SARBANES. In a sense, that was what you and Mr. Margolis were concerned about?

Mr. ADAMS. We were——

Senator SARBANES. Legally what Nussbaum was doing—I mean, what he was doing didn't contravene some legal requirement. In fact, I guess he could assert that he was obliged to interpose these privileges and objections; is that correct?

Mr. ADAMS. He did assert that, yes.

Senator SARBANES. But you had a concern about the appearance of this matter, you and Mr. Margolis?

Mr. ADAMS. Yes, we did.

Senator SARBANES. All right.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes.

If I can just follow up. My impression is that what Mr. Nussbaum did was a perfectly natural, proper response to protecting a client if that client were not in public office, but when you're dealing with a public office, particularly the Presidency, then you're in a different situation and, frankly, some mistakes were made.

Earlier today, Mr. Adams, you talked about seeing the first pages of each file. Were you talking about the meeting on the 22nd?

Mr. ADAMS. That's right. That was our understanding of what would happen or transpire during the search on the 22nd, that Mr. Margolis and myself and Mr. Nussbaum would look at either the title or the first page of every document to determine relevance to the suicide investigation and, if relevant, determine privilege questions.

Senator SIMON. In fact, that did not occur, then, Mr. Nussbaum simply looked at the documents or did you see them also, or did Mr. Margolis or others?

Mr. ADAMS. What happened, Senator, was that Mr. Nussbaum decided that that was not the way he wanted to do it, and he simply looked at the documents and characterized them himself and neither Mr. Margolis nor myself ever got to see them.

Senator SIMON. All right. We have a situation where, obviously, there is a tragedy that has caused strain on the part of a lot of people, and what Senator Kerry, I think, properly characterizes as some confusion in the situation, where you have in this room gathered on the 22nd a representative of the Foster family, who wants to protect the family; and Bernie Nussbaum, who is looking after the personal things of the President: As I understand it, Mr. Foster had some files on possible Supreme Court nominees where there might be a reference to rumors that Joe Smith or Jane Jones is an alcoholic, kinds of things that obviously you would want to have very minimum circulation on. We also have this whole question of jurisdiction where things are fuzzy, where you have the White House jurisdiction, the Justice Department, the FBI, Secret Service and Park Police.

In the midst of this confusion, which you have characterized as friendly and nonconfrontational, but nevertheless some confusion, did you have the feeling that there was an attempt on the part of anyone to cover up anything significant?

Mr. ADAMS. First of all, I'd like to address your use of the word "confusion." There was no confusion in my mind. On the afternoon of the 21st, which was the first time we had met with Mr. Nussbaum, the day before the search, there was no confusion in my mind as to what the ground rules were and the way the search would be conducted. I had no confusion about that at all.

I don't know—I don't have any indication there was an attempt to cover anything up. But that's in part because I didn't get a chance to see the documents. I don't think it was an attempt to cover anything up, based on what I know, but I don't know why Mr. Nussbaum changed the rules of the search.

Senator SIMON. But, in fact, the fact that he had a client who he was probably being overzealous in protecting and felt he was protecting may have been the basis for that?

Mr. ADAMS. It's possible. I don't know—I can't tell you what Mr. Nussbaum's thought processes were.

Senator SIMON. I have no further questions. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Following up on Senator Simon's question, from a technical standpoint with respect to the existence of a privilege—and you acknowledged that the materials in Mr. Foster's office were subject to attorney-client privilege, executive privilege, possible work product privilege, and the like. That's not an issue, is it?

Mr. ADAMS. I agree. No. There were some materials there that were subject to those privileges.

Mr. BEN-VENISTE. From a technical standpoint, even looking at the first page or the first words of a document could be considered a waiver of privilege?

Mr. ADAMS. I'm not positive that that's so.

Mr. BEN-VENISTE. But that's an area where you could not give a definitive answer, no, that's absurd?

Mr. ADAMS. I can't say that's absurd. I can also tell you that the privilege can be—part of the privilege is you can waive the—an attorney does not have to keep information about a client confidential if it's implied in the course of the representation that it not be confidential.

Mr. BEN-VENISTE. I understand, but that would require a great deal of research on each and every file in order to get the answer to that question.

Mr. ADAMS. If you were going to determine it on a file-by-file basis.

Mr. BEN-VENISTE. Right. Let me ask you this in connection with a question you were asked earlier about whether you had been more interested in handwritten than other documents, and you said that depended. Did that answer depend on in what context the handwritten notes would be found?

Mr. ADAMS. Probably.

Mr. BEN-VENISTE. For example, if an attorney were working on a question of law, and was writing notes to himself that this was

a difficult problem and he wrote that in hand, that would not necessarily suggest to you, would it, that he was considering suicide because he had a difficult legal problem to contend with?

Mr. ADAMS. No, that wouldn't.

Mr. BEN-VENISTE. You would assume, would you not, that an attorney who was a Deputy Counsel to the President of the United States would have any number of difficult legal questions to contend with?

Mr. ADAMS. That's a reasonable assumption, sure.

Mr. BEN-VENISTE. In reference to the question about this notation "can of worms," if you saw a document in a lawyer's office in his own hand in which he made a notation that something was a "can of worms," would this lead you to conclude that this attorney was on the verge of suicide?

Mr. ADAMS. Probably not. Just judged out of context like that, of course not. The phrase "can of worms," I just have to emphasize, though, I never—I think as I testified previously, I never saw any document that day with the phrase "can of worms" on it.

Mr. BEN-VENISTE. I understand. Finally, with respect to the newspaper article that came out the next day following, the 22nd, I think you indicated—The Washington Post—this particularly upset you, did it not, because the article implied in form or substance that the Justice Department had supervised the search in the office, whether or not the article was correct, whether or not a misimpression had either been given or unintended, the newspaper story said that the search had been conducted under the supervision of Department of Justice lawyers; correct?

Mr. ADAMS. That's what the article said. You are also correct that I was quite irritated when I read that because that was not correct.

Mr. BEN-VENISTE. In that sense, you may have shared the view with your colleagues from the Department of Justice that if somehow the White House was behind that story, that that would have constituted a misuse of your presence there that day?

Mr. ADAMS. I think that's correct. It added to the general impression that we had probably been used a little bit, yes.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. I want to commend you, Mr. Ben-Veniste, because I had just underlined that same line of questioning. So you saved us some time. We do not have to be redundant.

I want to commend you, Mr. Adams, for sharing with us this information. There is no need to go over this again because we are attempting to get the facts and figure out how people felt at various times and the events that took place.

I'm going to yield to Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman, and I apologize. I've had to be in and out all day, so I hope I don't step on too much ground that's already been walked on.

Mr. Adams, just a couple of quick questions for you. From earlier testimony it seems to me that the Department of Justice assumed they had an agreement with Mr. Nussbaum about how the search

on the 22nd was going to take place, and that this agreement was then breached by Mr. Nussbaum on the 22nd.

Do joint efforts between the Department of Justice and the White House normally require some sort of contract? I mean, you are all supposed to be working on basically the same goals and—didn't you think an oral agreement was enough and didn't you expect it to take place the next day?

Mr. ADAMS. I think, as I testified earlier, Senator, that—first of all, this was the only such agreement that I've ever been involved with between the Justice Department and the White House. It seemed perfectly appropriate that it would be reached orally. We had what we thought was a complete understanding, and there was no need to do anything other than just leave it as an oral agreement.

Senator GRAMS. What reason do you think Mr. Nussbaum had to make an agreement with the Department of Justice on one day and then to come back the next day and really go back on the agreement? Did he give you a verbal reasoning when he talked to you or when you questioned it?

Mr. ADAMS. He mentioned considerations of attorney-client privilege.

Senator GRAMS. Did you accept that?

Mr. ADAMS. I accept that as what he said, yes.

Senator GRAMS. I know you accept that's what he said, but I mean, did you accept that as a good argument?

Mr. ADAMS. Yes, as I was stating earlier, the attorney-client privilege, what we're really talking about is confidentiality, and the lawyer's duty of confidentiality can be that you don't have to keep things confidential if it's implied in the course of the representation that they should not be kept confidential. It would seem reasonable to me that he make the very limited type of disclosure that we had in mind to myself and Mr. Margolis with respect to each document. It would seem to me that he was still operating ethically to have done that.

Senator GRAMS. Now, you said in your deposition that if you were to speculate on this, you would have thought that he was talking to somebody and probably somebody in the White House, the President or the First Lady. Do you still think that, or if you're still speculating, would you think he was getting his orders somewhere else or at least consulting with the President or the First Lady?

Mr. ADAMS. I do not know whether he was talking to anyone else or not, Senator, I just have never asked him, he didn't say whether he was talking to anyone else or not. I just have no evidence on that.

Senator GRAMS. Why would he make you wait 2 or 3 hours while he left the room and then come back and change his mind? You are speculating that he did go to confer with somebody and for some reason decided to use the issue of confidentiality which in all respects he had the right to do?

Mr. ADAMS. As I've testified, Senator, I do not know what he was doing during that 2½-hour period.

Senator GRAMS. What about the tone of the two meetings on the 21st compared with the meeting on the 22nd? By that I mean was

it a more cordial atmosphere on the 21st when the agreement was reached and did it seem to be more hostile and adversarial on the 22nd as the actual inventory of the files took place? Did you feel more uncomfortable being in the room at that time?

Mr. ADAMS. It was never really hostile or adversarial. We were never shouting or yelling at each other. We had the agreement with Mr. Nussbaum on the 21st, and on the 22nd he changed his mind. We continued to be cordial and polite to each other, everybody did, on the 22nd. It's not fair to characterize it as an atmosphere of hostility, no.

Senator GRAMS. Earlier in testimony Mr. Spafford said that there was no mention of Whitewater or no mention of taxes when they were looking through the file when that came up. Did that surprise you at all, given further testimony or anything, knowing that he was working on Whitewater, taxes for the President or other personal things, that that was never mentioned although it was a known fact that those were the types of files that Mr. Foster was working on?

Mr. ADAMS. At the time, the term "Whitewater" meant nothing to me. I didn't know whether he was working on Whitewater or not. It didn't surprise me a bit that he was working on personal tax returns of the President and Mrs. Clinton, no.

Senator GRAMS. But did that come up? Was the file labeled "taxes" and set aside as confidential?

Mr. ADAMS. I cannot remember whether there was a file labeled "taxes" or not.

Senator GRAMS. But then, again, you never got a chance to look at it, you could only go by what Mr. Nussbaum was telling you?

Mr. ADAMS. Yes, I never saw the files, never saw the documents. I just had Mr. Nussbaum's word for what they were.

Senator GRAMS. Finally, I just wanted to follow up on one thing Mr. Sarbanes just asked here a moment ago. He asked, could things be legally OK but look improper, but if you turned that around, could something have the appearance of being proper and actually be illegal, hypothetically?

Mr. ADAMS. Could you give me a specific example?

Senator GRAMS. No, I was just asking, I didn't know what Mr. Sarbanes was trying to say. He was saying that legally it might be OK, but it had the air of being improper. But, at the same time, things could have been looking as if they were proper, but something was being covered up. I'm just trying to turn this around, and I didn't know what Mr. Sarbanes was asking and I thought maybe you did.

Mr. ADAMS. I don't think I can answer a hypothetical.

Senator GRAMS. I don't know if I was really looking for an answer, but I just thought—OK. Thank you very much, Mr. Adams.

The CHAIRMAN. Let me, Mr. Adams, touch on one thing so that we get the whole picture: Some nuances are pretty tough to reconstruct after a period of time. When I read your two-page memo—and you did say in response to Mr. Ben-Veniste's questions that you were annoyed, and indeed I know that Mr. Heymann was annoyed, as it relates to the characterization of the review of the documents having taken place—and I quote your words—"under the

supervision of the Justice Department lawyers." That was upsetting and you said it; is that fair?

Mr. ADAMS. Yes, I think in my memo I have that in quotes.

The CHAIRMAN. Yes.

Mr. ADAMS. I don't have any independent recollection here, but I'm assuming that that phrase——

The CHAIRMAN. Yes, in your memo you have it in quotes. As a matter of fact, Mr. Heymann even ordered Mr. Stern to—you know Mr. Stern, don't you?

Mr. ADAMS. Carl Stern, yes.

The CHAIRMAN. Who is Mr. Stern, for the record?

Mr. ADAMS. Carl Stern is the Director of Public Affairs at the Justice Department.

The CHAIRMAN. Do you know that he contacted Mr. Stern with respect to correcting the record publicly thereafter?

Mr. ADAMS. I have heard he contacted someone in Public Affairs. I'm not positive it was Mr. Stern.

The CHAIRMAN. OK. But now let's go back to the day before that article on July 22, 1993. During the course of the review of the documents by Mr. Nussbaum, didn't there come a time when both you and I think it was Mr. Margolis were about to leave, got up and said words to the effect we're not needed here and if this is the way it's going to go, we're going to leave, and that Mr. Nussbaum then said oh, no, wait a minute, sit down? Didn't that occur?

Mr. ADAMS. No, sir, I never thought of leaving.

The CHAIRMAN. Did Mr. Margolis think of leaving?

Mr. ADAMS. I can't tell you exactly all his thought processes.

The CHAIRMAN. There was no discussion in which Mr. Margolis suggested that the review was not proceeding according to the initial agreement and that the——

Mr. ADAMS. The closest thing I can think of, Mr. Chairman, is at the—I think it was near the start of the search that Mr. Margolis made the comment to Mr. Nussbaum that, if this is the way the search is going to be conducted, I might as well be back in my office, you can mail me the results.

The CHAIRMAN. Exactly. I thought that was important. This was not the way it was supposed to be, but you were boxed in and it was that or nothing?

Mr. ADAMS. That's correct.

The CHAIRMAN. OK. Thank you. We have no further questions.

Senator DODD. Just very quickly. Again, have you done this kind of a thing before, been involved in a similar type of situation where there are privileges being claimed of one kind or another where lawyers are present?

Mr. ADAMS. Not like this, no.

Senator DODD. The reason I ask is I'm sitting here and I'm struck by the notion just given the interests represented in the room by a bunch of lawyers and, again, it seems clear from what we know so far here that Whitewater is not being discussed, the Travel Office is not being discussed.

What you have is executive privilege and privacy of a family, and it almost seemed inherent that someone was going to be annoyed. You've got your job to do. The lawyer for the family has his job to do. The lawyer for the President has his job to do. With all of you

trying to do your jobs, and attorneys there trying to do their jobs as they see it and such, isn't there almost an inherent tension in that kind of a situation where there are legitimate interests—and no one is arguing that the attorney for the family didn't have a legitimate interest or that Mr. Nussbaum didn't have a legitimate interest here or obviously that you and Mr. Margolis didn't have a very legitimate interest.

Do you see what I'm trying to get at? Does that come as any great surprise, as one who is an attorney, that you end up with that kind of an environment?

Mr. ADAMS. No, I think what you are saying, if I understand it correctly, is that there were competing interests in the room, and I would agree with that.

Senator DODD. So that people being annoyed when they're not exactly getting everything they would like shouldn't come as any great surprise to people?

Mr. ADAMS. I suppose that's true; if you don't get what you want, you're not happy about it. I think it's particularly reasonable to be unhappy when your position in a matter has been mischaracterized by someone else. That was the subject of great annoyance.

Senator DODD. I understand that. But my point is, for instance, that the suggestion—tell me if this was true. Was there some discussion by Mr. Margolis to Mr. Spafford that, if he wasn't able to look at these things, he could just subpoena them if he wanted to? Do you recall that?

Mr. ADAMS. I don't recall Mr. Margolis saying that, no. I was probably not present within earshot of Mr. Margolis for every single minute that afternoon, particularly as we left the office.

Senator DODD. My point being—and I don't know that that's the case either, except that we had information to that effect. I can see that he, the attorney for the family, is responding by no, we have legitimate rights here to protect this family, that's my responsibility as their attorney to see to it that their private matters are kept private.

I appreciate your answer to that. I think that does help. For those who are not attorneys and hear these kinds of things, there are implied assumptions as to why people are being somewhat reluctant, and I think you've been very clear about it and I appreciate your responses here that, in fact, there are competing interests here that are not necessarily lawyers trying to cover up or hide for somebody, but rather protect very legitimate interests that you could argue your response whether I, on behalf of their clients, if they didn't make a fight for those interests in a fair and right way. Do you agree with that?

Mr. ADAMS. That's a pretty long question, but generally I would summarize it by saying yes, I agree that there were competing interests, I agree that all the lawyers were arguing effectively on behalf of their client.

Senator DODD. There's no information you have that the reason Mr. Nussbaum or Mr. Spafford were making the case that they were had anything to do with Whitewater or the Travel Office or anything else? It was merely an executive privilege and privacy?

Mr. ADAMS. As I testified earlier, the term "Whitewater" meant nothing to me at that time.

Senator DODD. But it never came up in the conversation there?

Mr. ADAMS. No, it didn't.

Senator DODD. You have no information certainly to draw that conclusion?

Mr. ADAMS. Really all I can tell you is based on the events of July 1993, which is what I'm here to testify about. I didn't hear the term "Whitewater" and, if I'd seen a file that said "Whitewater" on it, it wouldn't have meant anything to me.

Senator DODD. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I don't believe there are any other questions from this side. If there is none from the other side, I want to thank you, Mr. Adams, Mr. Flynn, Mr. Salter, for participating today and for giving us your testimony to the best of your ability.

We will stand in recess until 9:30 Tuesday.

[Whereupon, at 4:10 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Tuesday, August 1, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

A4 FRIDAY, JULY 23, 1993 ...

Washington Post

Clinton Finds No Explanation To Aide's Death

Probes Continuing On Apparent Suicide

By Ann Devroy
Washington Post Staff Writer

President Clinton yesterday minimized the likelihood that an explanation will be found for the apparent suicide of White House deputy counsel Vincent Foster Jr., but investigators for the U.S. Park Police and Justice Department said their investigations of Foster's death are continuing.

As many of the Arkansans who came to Washington to run the new government began returning home for the funeral of their friend, Clinton and his senior aides repeated that no clues now exist to explain Foster's death. He was found shot in the head Tuesday night in a secluded area of a Virginia park overlooking the Potomac River.

U.S. Park Police Chief Robert Langston, whose officers are conducting the inquiry into the death, said all evidence "is leading in the direction" of confirming the original finding that the 48-year-old lawyer took his own life.

Foster's office was searched yesterday in the presence of officials from the National Park Service, the Justice Department, the FBI and the Secret Service, according to the White House.

Under their supervision and in the presence of a Foster family lawyer, White House counsel Bernard Nussbaum examined the office and found "no suicide note nor any other document bearing on ... the death," a White House statement said.

The Justice Department said yesterday it has discovered nothing "to indicate foul play or murder" in the death. Nevertheless, the department's inquiry will continue "to find out what the factors were—if it was a suicide—that led to him killing himself," said department spokesman Dean St. Dennis.

The department's intentions seemed more extensive than what had been announced Wednesday, but St. Dennis described the probe as "simply a part of good police work" when a high-level government official dies "under less than known circumstances."

"It appears that Mr. Foster's death was a suicide," St. Dennis said. But, he added, "even though there may be only one in a 1,000 chance of foul play, everything will be done to keep in sharp focus even the remote chance that he may have been murdered."

Langston said the police have examined Foster's telephone logs, paperwork in his office, computer files and interviewed "a number of people" who talked to Foster on Tuesday. Foster had arrived as usual at the White House, had lunch at his desk and left the White House shortly after 1 p.m. Police are attempting to reconstruct the five-hour gap between Foster's departure and the call to authorities shortly after 6 p.m. by the person who found Foster's body.

"We have quite a bit of information left to gather," Langston said. Police, for example, are tracing the license plates of cars that were parked in the overlook lot. Detailed interviews with the family will not occur until after today's funeral, when at least one mystery is expected to be cleared up: whether Foster used his own gun to kill himself.

Langston said one old gun was found at the scene, but it was constructed of parts of at least two guns with separate serial numbers. The chief said Foster owned a gun described as being like the one found.

Foster's body was flown to Little Rock, Ark., yesterday aboard a Defense Department aircraft, accompanied by Associate Attorney General Webster L. Hubbell. Foster, Hubbell and Hillary Rodham Clinton were partners in the influential Rose law firm in Little Rock, and the three were described by the president as "best friends."

The Foster family and other Arkansans flew separately on a private plane to Little Rock where a funeral mass will be held this morning at St. Andrew's Cathedral. The Clintons were to attend the service with their daughter, Chelsea, and the president was to deliver a eulogy for his childhood friend.

Like the president, many of Foster's colleagues and friends continued to question how a lawyer at the top of his career and with no visible serious problems could have taken his life. While many of Foster's associates described him as being "down" and "depressed" and too prone to blame himself for White House problems, they all said he had given no hint of a depression so serious as to take his own life.

"I don't think there is anything more to know," Clinton said. "I mean, you know, his family, his friends, his co-workers—we've been up real late two nights in a row now, remembering and crying and laughing and talking about him, and I don't think there is anything else."

Staff writer Michael Isikoff contributed to this report.

CONFIDENTIAL MEMORANDUM

TO: James Hamilton

FROM: Michael L. Spafford

DATE: July 23, 1993

RE: Vincent Foster

On Thursday, July 22, 1993, I was present when the White House office of Vincent Foster, Deputy Counsel to the President, was unsealed. At the request of the White House Counsel Bernard Nussbaum, I attended as attorney for the family of Mr. Foster. Also in attendance were Mr. Nussbaum, Cliff Sloan and Steve Neworth of the White House Counsel's office; Bill Burton from the office of the Chief of Staff Mack McLarty; David Margolis (514-4945) and a Mr. Adams from the Department of Justice (Criminal Division); Peter W. Markland (690-5050) and another gentleman from the United States Park Police; two gentlemen from the FBI; and, Mr. Flynn and another gentlemen from the Secret Service. Mr. Margolis took the lead for the investigators.

According to Steve Neworth, Mr. Nussbaum entered the office Tuesday night sometime after 10 pm and made a cursory review of the office, looking for a suicide note. None was found; nothing was removed. A guard then was posted by the Secret Service and the office was sealed. No one subsequently entered the office until today, at approximately 1:15 pm, when (in the presence of the aforementioned officials) Mr. Nussbaum unsealed the office.

Mr. Foster's office had a couch, two end tables, several chairs, a book shelf, a desk and two credenzas. A computer sat

PRIVILEGED AND CONFIDENTIAL

on one credenza; a tv was on top of the book shelf, which extended over the credenza. There were several papers piled on his desk in orderly fashion, many of which were stacked in what appeared to be an out box.[1] Also on the desk were his glasses, a dictaphone (no tape was inside), and a paper weight. In addition, a briefcase was on the floor next to his desk; the briefcase held several files, some notepads, and a notebook. Per Mr. Nussbaum, Mr. Foster was not the type to carry his briefcase with him wherever he went. His trash had been retrieved and was in a plastic bag on one credenza; also the "burn bag" had not been removed and was on the floor next to his desk.

In order to protect the attorney-client privilege and other privileges and confidences of the President, the following procedure was agreed upon: Mr. Nussbaum reviewed each document and described for the group the general contents of the document (e.g., internal correspondence about White House issues; legal memos re health care, etc.). No one other than Messrs. Nussbaum, Sloan, Neworth and Burton were allowed to inspect the documents. The documents generally were separated into three groups: personal matters, documents of potential interest to the investigators, and matters of no apparent interest. No suicide note was found.

Documents of potential interest to the investigators included (but were not limited to) calendars, lists of recent telephone calls, xeroxed copies of editorials and newspaper

---

[1] Included in the box was a folder entitled "insurance".

articles (to the extent they were critical of Mr. Foster); some handwritten notes of names of persons who did not work at the White House; some other handwritten notes unrelated to White House matters; and phone messages. Mr. Margolis asked Mr. Nussbaum to review these materials so that they could discuss the manner in which his investigators could review them. He also asked that Mr. Nussbaum review the other documents (except the personal documents) and Mr. Foster's computer, and report to Margolis any threats or unusual items that may appear in their contents. It was agreed that Mr. Nussbaum would undertake such a review and would discuss with Mr. Margolis any issues that may arise.

The personal papers and belongings that had been segregated were gathered and placed in a large box in full view of all present.[2/] After some discussion, it was agree by all present that I would remove the materials to our office; that Jim Hamilton and I would review the materials; and that we would call Mr. Margolis tomorrow to discuss any issues that arose as a result of our review and the manner of inspection by the investigators. I then took custody of the materials and brought them back to Swidler & Berlin.

In discussions with Mr. Margolis, he made it clear that the Government would get a grand jury subpoena for the materials if

---

2/ Among his personal files, the investigators noted the following items they would like to review: a folder marked "insurance"; a map of metropolitan Washington, D.C.; handwritten notes; a black binder labelled "Foster Notebook"; credit union slips and other receipts; tax returns.

PRIVILEGED AND CONFIDENTIAL

necessary,[1/] but suggested that cooperation might be preferable. I responded that I didn't see any impediments to cooperation; but I noted that, without reviewing the documents, it was difficult to make that judgment at this time. I also stated that, due to the stressful and trying circumstances, we had not had an opportunity to discuss the issue with our clients. I stated that our goal was to cooperate with him to the greatest extent possible while at the same time protecting the legitimate privacy interests of the family.

In Mr. Foster's office, Mr. Margolis or one the investigators stated that "the vast majority" of suicides leave behind a note. The fact that none has been found, per Margolis, raises the issue of foul play. Per Margolis, the gun was assembled from two 1913? colt pistols, which they have been unable to trace due to their age. He stated that the investigators wanted to talk to the family about ownership of the gun (e.g., family heirloom?). The full autopsy report is not expected for two weeks. Preliminary indications were that he died of a gunshot wound fired at close distance; all consistent with a suicide.

Attached hereto is an inventory of the personal materials removed from Mr. Foster's office pursuant to agreement with the

---

1/ He felt he had clear legal grounds for a subpoena since it was a crime on federal property and, if foul play were involved, he would have jurisdiction to investigate as a possible assassination.

PRIVILEGED AND CONFIDENTIAL

Department of Justice and White House Counsel. Also attached are my notes taken during the meeting held in Mr. Foster's office when Mr. Nussbaum reviewed the contents of his office.

~~Justices~~

Margolies
Atlanta > DOJ
2 Park Service
2 Secret Service (Flynn)
2 FBI

GC
BN
Cliff Sloan
~~Steve Neuwirth~~
Steve Neuwirth
Bill Burton (Richards)

BN your description:

1) Top of Desk: White House News Report
video tape of 6/9/93 speech
WH calendar (xerox) ... his glasses on desk
law bks
computer/secured phone user manual
Dir for secured phone
telephone dir)
campaign brochures.
→ list of t/c (7/20) ← Margolies
* → documents relating to First Family (Trust, etc.)
note to Vince re legal research re health care
correspondence re Georgetown Law Center
→ editorials ← Margolies wanted to know if critical
articles on health care
internal correspondence re d/c duties
letter re d/c duties
memo re summer clerks
in folder entitled inner → P&C inv; motor vehicle acc. ←
letters re Pres.
note re confirm. process
job applicant

M: subject? anyone say will [illegible] hit you over head

R-9

07-11-95 12:27PM P008 #23

corresp re travel
cont'ing education
letters re Pres; WH matters
reprint from lawyer
fiducial opin health care case
Ofc of Gov't Ethics pamphlet
internal memos from other counsel
letter to Biden
letter re WH social events
notes on pad
magazines
copies of WH correspondence
health malpractice reform
requests for speech
memo from VP
budget for GC
memo from WH w/ draft correspondence
phone log — ~5/14
letter from Nat'l Archives re docs
memo re DC taxes -- memo from B Gray
→ notes on page ←
green folder with lists of issues wk'd on

---

2) B top drawer (or not as spotted)
→ — a map of metro Wash ←
— notes on issues wk'd on in GC ofc
— pad with notes on WH issues

07-11-95 12:27PM P009 #23

another white pad of notes on WH issues (eg, use of military plane, cabinet retreat, volunteers, etc

yellow pad of notes re transition

a dictaphone ← BN: have someone listen to it; very soon
no tape

(3) briefcase ← Q: did he carry briefcase all the time?

blue file of memos
copies of newspaper article not @ him
BN: no; used as file
4/8 letter for Hillary
folder
H/w note
notebook of notes of meetings, GC issues
WH calendar ← M: Oder
memos on expenditures, gifts
log of correspondence receipts for travel
memos on GC issues
memo on expenditures
litter to Reno from Dole
notes pad w/ H/w notes re GC issues
copies of newspaper article(s) (nothing goes to VF)
WH travel etc vignet rule
Standards of ethical conduct
Art newspaper article re VF (1/29)
memo on Clinton Pres library
Att Cmte (picture of staff when announced)
memo re gifts (athletes)
correspondence re transition
13 articles
Post art on opt(s)
memos re WH functions, inaugural
doc(s) & legal opn(s) (OLC)
(4) 3 1/3 drawer
memo re potential applicant
M: look
phone messages: 1/25, 1/26, 1/22, 1/27
stationery
non-official
H/w note from staff

R-9[illegible]

07-11-95 12:07PM P010 #23

h/w list of people who wk at wtt & addresses
box of wtt cards

2573 on R = file drawer

~~left~~ left drawers

list of phone #s in wtt
pls see → h/c slips from Feb ←
paper clips; scotch tape

* checks
* mtg book
blank envelopes
h/w note on ethics
bills for utilities, hse
invitation
Charles Schwab recds
anyone in PC? any MD(s)? → * "Not Easy to Look" — phone dir of people from
notes & corresp re wtt matters
inter-im phone dir
magazines
lists of wtt employees

07-11-95 12:27PM PO:

pictorial w/t log
Reagan & Bush GE memos

2 File drawers on R — work — contains files ← M: look at

Trash bag from that day: picked up 2 a day

envelope
credit union slip ← M: show balance yes
receipts ← M: he clearly waived this; abandonment
6 f c memos
w/t bulletins
~~bulletin~~ Pgs & schedule
h/w notes re pers ←

FBI: Can they look @ these trash?
h/w notes re work

Credenza: on R

→ matters re first family
mostly files re GC matters
notebooks on prospective nominees
supplies
candlesticks
notebook re jud nominations
notebk re St. Erotica
magazines
copy of Forward to bk Ron Kennedy
Fed Rules of Civ Pro
Bk on Mkt Liberalism

3/18 letter re position off Pres.
card from friend

Credenza on L (w/ computer)

→ files
- mostly wk related

Mr. Separate → Some pers files. tax returns
bills
Flier
moving supp
lease

only Q is
settle w/ counsel?
don't have to
consult

07-11-95 12:27PM PO

Files on official business

notebook re prop in Ark ←

bk sp Wash DC

bk shelf =

books

TV

notebook on jud selection process

0.12 to give to family pictures & memorabilia → pictures

notebks on GC issues

healthcare task force files

speeches

articles

draft legislation

note pds re health care

m= what@ computer? Please review

End tables = bks, etc

Burn bag : picked up every day

H/W notes re GC issues
all w/k related

FBI – most people leave notes

Ingram put together from 2
mtg – gunshot wd / close distance
autopsy rpt – 2 wks

Want to discuss pre-filed?

Minutes of prep?

Department of Justice

Washington, D.C. 20530

514-4945

David Margolis

Chief

Organized Crime & Racketeering Section

Criminal Division

Phone 202-633-3616

670-5050

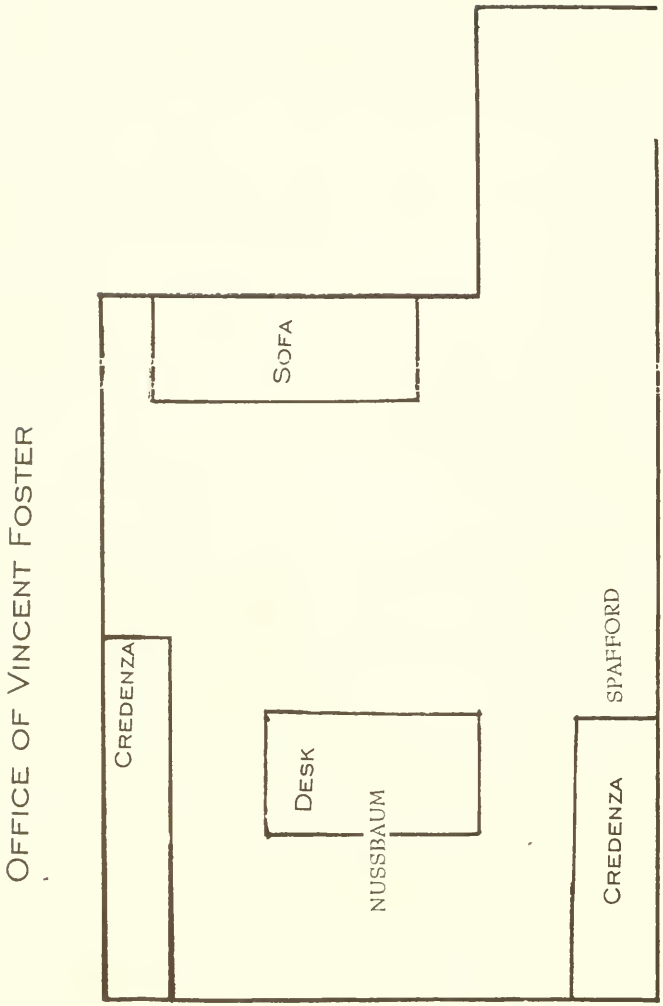
(202) 426-6007

PETER W. MARKLAND

United States Park Police

HEADQUARTERS
1100 OHIO DRIVE, S.W.

WASHINGTON, D.C. 20242


OFFICE OF VINCENT FOSTER
SOFA
CREDENZA
DESK
NUSSBAUM
SPAFFORD
CREDENZA

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/3/93

CLIFFORD M. SLOAN, Assistant Counsel, the White House, Washington, D.C., was advised of the identity of the interviewing agents and informed of the nature of interview. SLOAN provided the following information:

SLOAN advised that he first learned of VINCENT FOSTER's death on Tuesday, July 20, 1993 at approximately 11:30 p.m. SLOAN was aware that FOSTER's office was secured at approximately 10:00 a.m. on Wednesday, July 21, 1993. SLOAN was present for the inventory of the contents of VINCENT FOSTER's office which occurred on Thursday, July 22, 1993. SLOAN advised the interviewing agents that he recalled when BERNARD NUSSBAUM examined the contents of VINCENT FOSTER's briefcase but could not recall any specific items which were located in the briefcase. SLOAN believed that all the items were taken out of the briefcase however he did not examine the empty briefcase at that time. SLOAN was asked by the interviewing agents to review the notes he took during the inventory of July 22, 1993. SLOAN examined his notes and advised that there was nothing in his notes which is of any use in providing more details regarding the inventory.

SLOAN advised that he was not aware that a note had been located until the evening of Tuesday, July 27, 1993. At the time SLOAN was notified that a note had been located, the note had already been turned over to the UNITED STATES PARK POLICE.

SLOAN advised that he was told that the note was located by STEPHEN NEUWIRTH having been found when NEUWIRTH turned VINCENT FOSTER's briefcase upside down in order to place it in a box. As the briefcase was turned upside down several scraps of paper fell out of the briefcase and NEUWIRTH subsequently located more scraps of paper inside the briefcase. The scraps of paper were assembled and the message on the note could be read.

Investigation on 7/30/93 at Washington, D.C. File # WMFO 175B-WF-187741

by SA [redacted] P
SA [redacted] Date dictated 8/3/93

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

23

SLOAN advised that he was not surprised that the note was located in the bottom of the briefcase even though the briefcase had been previously emptied and its contents inventoried. SLOAN recalled that after the briefcase was emptied by NUSSBAUM and the contents reviewed, the empty briefcase was placed on the floor at the spot where he (SLOAN) was standing. However, SLOAN did not notice if there were any items remaining in the briefcase because he "did not look after every detail." SLOAN was not aware of any other notes left by VINCENT FOSTER which would be relevant to the investigation of FOSTER's death. SLOAN was also unaware of any circumstances regarding the location of the note in question other than the version given by STEPHEN NEUWIRTH.

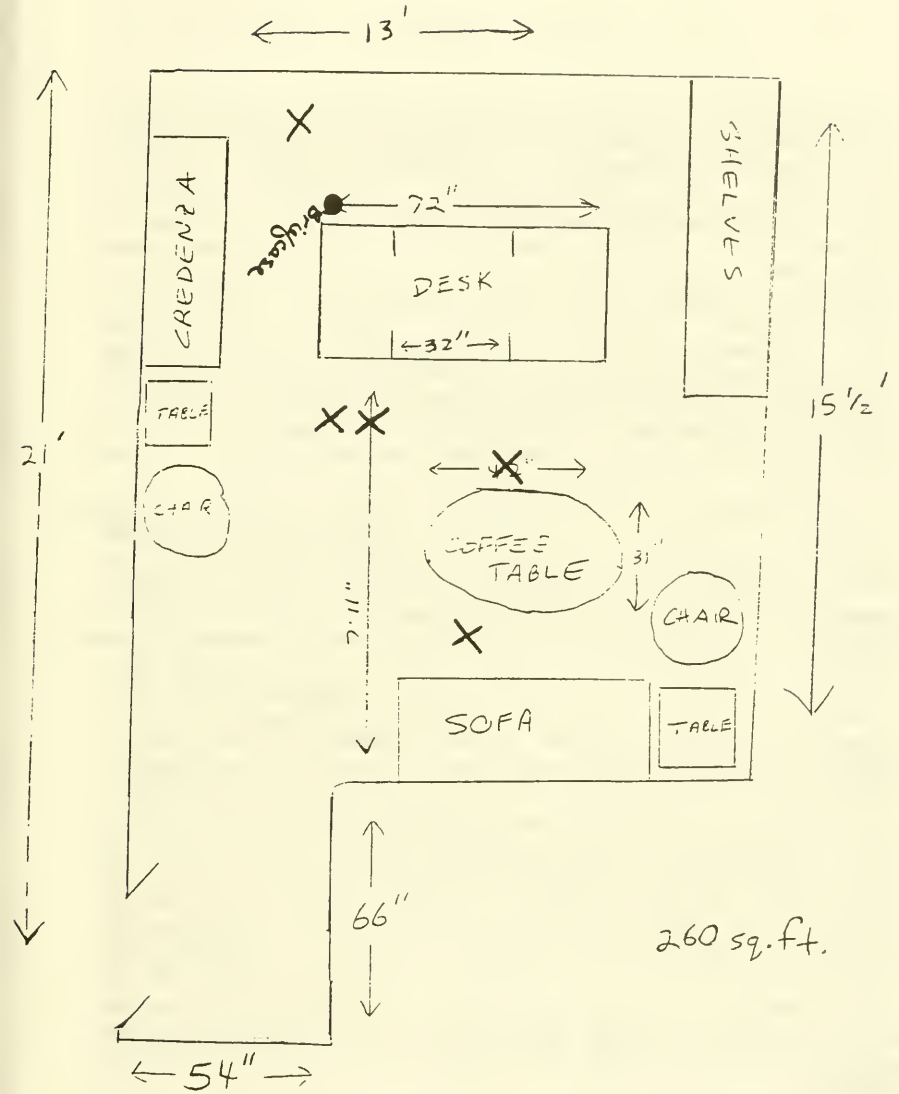
Atty-Client/Wrk Prod

VWF- Working Files - DESK - 2000001 RIGHT MIDDLE DRAWER

1. Armstrong
2. Michael Beatty
3. Cabinet Memberships
   - Cabinet Secretary
   Walkingboard
4. Calendars
5. Clearance Procedures
   - Clearance Procedures
6. Energy, Dep't of
7. Dep't of Justice
8. Ethics - One Yr Recusal Rule (Empty)
   - Ethics - one yr recusal rule
   - Ethics Pledge
   - Exec Action Procedure/Gen. Rsrch.
   - Ethics Summary
9. Exec Orders/Actions - Misc.
10. Exec Clerk
    - Exec Clerk
11. FERC Comm.
12. Deborah Gorham
13. Haitian Options
14. Webster Hubbell
15. Judicial Nominations
16. Top Secret Security Clearance
17. White House Acquisitions
18. McClarty - General
    McClarty - General

Z000002

19. ALEXIS HERMAN
20. OFFICE PROCEDURE
    - WHITE HOUSE POLICIES
    - OFFICE PROCEDURE
21. PARDONS.
22. PRESIDENT - COMMERCIAL APPROPRIATION (empty)
23. PRESIDENTIAL DISABILITY (empty)
    - PRES. DISABILITY (empty)
24. PRES. GIFT RESEARCH
    - PRES. GIFT RESEARCH
    - PRES. PAPERS ADVICE/FOIA INCOMING
25. PRESIDENTIAL PERSONNEL - GENERAL
26. READING FILE
27. RUFF
    - RUFF
28. RESUMES
29. RUBIN
30. STAFF - BUDGET
31. STAFF - DETAILEES
32. STAFF - PERSONNEL
33. STAFF SECRETARY
    - STAFF SECRETARY
    - STAFF STRUCTURAL OPERATIONS
34. STANDARDS OF CONDUCT - FICA (empty)
35. PERSONAL FILE 451
36. TRANSITION/PERSONNEL FORMS (empty)
37. TRANSITION - general personal & confid
    - PERSONAL MISC and CONFIDENTIAL


13'
21'
CREDENZA
TABLE
CHAIR
72"
DESK
32"
SHELVES
15 1/2'
COFFEE TABLE
31"
CHAIR
SOFA
TABLE
66"
54"

260 sq. ft.

- (A) Adams Notes (Tue 19)

In the late afternoon of Wednesday, July 21, we met in the office of White House Counsel Bernard Nussbaum with Mr. Nussbaum, Steve Neuwirth and Cliff Sloan of his staff, and representatives of the FBI and Park Police to go over the ground rules for a search of Mr. Foster's office. All agreed that because of the hour the search would not begin until the next day. At that point the Secret Service had stationed an agent by the door to Mr. Foster's office and a Secret Service agent who was at the meeting announced that a special lock would be placed on the door and that he personally would hold the key to secure it overnight. However, Mr. Nussbaum stated that he had already conducted a quick search of the "top of the desk" the previous evening to see if he could find a note. Moreover, other persons in the Counsel's office had entered the office during early morning business hours. Specifically, Mr. Nussbaum had allowed a secretary to enter the office to "straighten up" the top of the desk. and cleaning personnel had entered to empty a waste basket. Mr. Nussbaum or someone else in the Counsel's Office noticed the basket being removed and had retrieved the contents. They were in a plastic bag in the office.

At the Wednesday meeting there was agreement that the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or FBI. We would not read the documents or make notes, but merely examine them long enough to determine if they were covered by the attorney-client privilege or possibly executive privilege. As an example of the clarity of this agreement, Mr. Neuwirth at one point, apparently trying to summarize it, said that "Bernie would look at each document and determine privilege. If he determined no privilege, it could be shown to the law enforcement officers." He was immediately corrected and Mr. Nussbaum agreed that the Justice Department representatives would see the documents to determine privilege. The next morning, however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide privilege issues himself. The Justice Department attorneys pointed out that that was inconsistent with the previous day's agreement and would cause problems. We stated that the Counsel's Office would be better off to allow the Department attorneys to decide or at least help decide, privilege issues, because that would allow the White House to say that the issue was considered independently. Moreover, we stated that we had been asked to undertake this particular assignment at the White House in part because we had reputations of not talking to the press or "leaking." Mr. Nussbaum did not immediately begin the search but waited for about two and one half hours -- during which time he said he was considering whether to allow us to see the documents -- before deciding that only he and Associate Counsels Neuwirth and Sloan would see the documents.

During the search, Messrs. Nussbaum, Neuwirth, and Sloan stayed behind Mr. Foster's desk and examined documents pulled from the desk, nearby credenzas, and a briefcase. No other persons actually saw the documents. At one point during the search, Mr.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, AUGUST 1, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:35 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The hearing will come to order. Before we call our first two witnesses, Senator Sarbanes has a statement he wants to make.

Senator Sarbanes.

OPENING STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, first of all, happy birthday.

The CHAIRMAN. Thank you.

Senator SARBANES. Second, I'm very much concerned about this leak problem. I've raised this before, but now we've had a situation in which, apparently, actual deposition transcripts were given to the press. Now, these are, as I understand it, the actual documents or copies of the actual documents, and it directly contravenes every procedure of the Committee which were worked out very carefully and for very good reason.

Section 6 of the resolution provides for the protection of confidential information. It states nondisclosure and that no Member of the Special Committee or the staff shall disclose, in whole or in part, to any person other than other staff or other Members, various material. Then there's a nondisclosure agreement, which members of the staff signed.

Now, we've had previous problems here that I've raised and brought your attention to where people have disclosed information, often erroneous information, resulting in articles having been written that completely misstate the situation. The witnesses suffer as a consequence of that, and that was drawn out in the course of previous testimony here. Ms. Mathews, for instance, was written up as having said certain things which she didn't say, which became very clear in her testimony.

We have a situation in which, apparently, the actual transcript of the deposition itself is being given out. This is rather important, and it's interesting because these become available to the Members the night before, under our procedures. So I was reading through one of the depositions of one of the witnesses here this morning—and just to underscore why it's important to the witnesses, let me just read from that transcript very quickly.

One of the deponents, one of the witnesses on our first panel, asked about the release of the transcripts and was told by Mr. Giuffra, who was doing the questioning at that point for the Committee, "No, the depositions will be treated as Committee confidential until that time," meaning the time of the testimony here, meaning only a limited number of people can see the deposition. The people sign confidentiality agreements.

Later, the witness herself was asked whether she understood what had just been said about the procedures and said, "I do. There are, however, leaks, obviously, because we continue to read about them in the paper, the people that you have deposed to date. So where is the confidentiality being violated?"

Mr. Giuffra said, "Do you want to go off the record for a second," and they went off the record. A discussion ensued and Mr. Giuffra, when they came back on the record, said, "Just to briefly summarize, we discussed some of the procedures that the Committee has in place to protect the confidentiality of deposition transcripts."

That's what the deponent was told and, of course, the Committee did put those procedures into place, just as we put procedures into place last summer. Now, the procedures are obviously not being adhered to and, I must say, Mr. Chairman, there's a problem which requires a very intense looking into on the part of the Committee because obviously someone is breaking all of our procedures here. We had the——

The CHAIRMAN. I wish that all of our Members were here to hear the concern that you have very aptly and correctly raised. I believe that this is a betrayal of the work of our counsels and their staff and indeed of the Committee and its Members, the Senators on both sides who are endeavoring to get the facts and to do it in a way that is not prejudicial.

I can only say that I will work with you and ask our two counsels to do everything necessary to find a way to secure the depositions and testimony. It is difficult, if not impossible, to do so without the good faith of the people, not only on the Committee, but on the staffs.

I do not believe that any Senator on either side has violated the sacred trust. I do believe that there is a staffer or staffers who, for their own reason, whether it's to aggrandize themselves with the media, or to show what kind of pull or knowledge they have in undertaking this, they undermine the credibility and all of the work that we undertake when they engage in this kind of activity.

Senator SARBANES. Mr. Chairman, I think—sorry.

The CHAIRMAN. I think we can continue to lament about it, but I'd like to suggest that we see if we can—I don't know what else we can do except keep everything under lock and key to the point where no one can remove any documents or even work with them. There have been certain procedures—and I want to tell whoever

does this that they undermine the entire process and hinder the efforts of the people who testify and, again, this Committee and every Member of the Committee. They undermine it.

I don't know what else to say. I've sought out individuals. I've spoken to staffs. Maybe we'll have to get them together again. Maybe we'll have to—what do they do in criminal trials where they put all the people together and keep them incommunicado from getting certain information? Maybe we'll have to get the staff and Senators—what do they call that?

Mr. BEN-VENISTE. Sequester.

The CHAIRMAN. Maybe we will have to sequester the Senators and the staff. Now, this really is incredible. Senator, I don't think we should. It is important. I share your concern. If Mr. Ben-Veniste, Mr. Chertoff, any of you or I can attempt to impose better security, I would do anything within reason to ensure security.

Senator SARBANES. Mr. Chairman, I think we can focus this in much more finely. As I understand our procedures, which I assume have been followed, an agreement was worked out whereby the deposition transcripts would not be given to the Members of the Committee or their staff until the evening before the witness' appearance in front of the Committee.

The CHAIRMAN. Right.

Senator SARBANES. In other words, last night the Members received the transcripts for the witnesses who are coming in today. Now, the transcripts that were leaked were for witnesses who are not even coming this week. They're coming next week. So, presumably, if the procedures were followed, and I have no reason to think they weren't, Members and Members' staff did not have access to those transcripts. The only people having access to those transcripts would be staff of the Committee.

So it seems to me that we can focus in very directly there, and I think that your suggestion that Mr. Chertoff and Mr. Ben-Veniste undertake to do that in consultation with us is a very good suggestion, particularly when, as I just quoted, you had one deponent who asked about this very issue and was given assurances by Mr. Giuffra with respect to it.

The CHAIRMAN. Again, I renew the agreement that we undertake this together, have our counsels pursue this matter and see if we can't narrow and maybe even get a better idea of who exactly was responsible for this because we have just been working too hard and doing too much good work to jeopardize this.

Yes, Senator.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Mr. Chairman, I think it's a little more complicated than Senator Sarbanes suggests because here you have Mr. Margolis, who is clearly one of the key players in all of this—I asked my staff some time ago if we had a deposition. They said no, I think he had a triple bypass. We did not have a deposition, but this is not leaked from a deposition. It's from E-mail, which I don't think——

The CHAIRMAN. Where is it from?

Senator MURRAY. —my staff seems to have, I don't think other staffs have. It is the selective and distorted leaking that I think

concerns us. I appreciate your attitude, and I know it is difficult in this body to prevent leaking, but I think we should try to so that we get balance out there and not a distorted picture of what's taking place.

The CHAIRMAN. I share the Senator's concern and I'm going to ask, again, that our counsels look into what can be done. We're going to have a vote at 10 a.m. My initial intent was to see if we could get the witnesses up, swear them in, maybe take their testimony and adjourn for that vote. But I'm going to ask counsels to pursue this matter. Again, to the staffers doing this, you're only jeopardizing these hearings, and what we will have to do in the future is restrict more the availability of the depositions. It's obvious that they will not be able to be made available to the staffers. Only Senators at certain times, if we have to keep it to that manner, will be able to see them until the night before.

Now, that will necessarily make it more difficult for the participation of the Full Committee, but I see no other recourse. Certainly, at this particular time, there's little that we can do as it relates to those depositions that have already been taken and the access that has been afforded at this point, but I'm going to ask that our counsels review the matter and give us their recommendations, then we'll confer with all of the Members of the Committee countering how to provide as much security as possible and to prevent the content of these documents from being selectively released.

I have not read any of these depositions because I didn't want to be in the position of inadvertently, when responding to a question, recalling something that I may have read that would not be appropriate. I have deliberately refrained from that.

I don't think that it comes from any of the Members, but I do think that there is at least a staffer who thinks he's doing some wonderful public service, but he or she is not doing that.

Why don't we get our first panel of witnesses up and we'll take any statement that they want to make. We'll swear them in, and I don't think it's worthwhile starting because we will have a vote at 10 a.m., but immediately after that vote, we'll come back and resume. I think we have Deborah Gorham and Linda Tripp.

[Witnesses sworn.]

The CHAIRMAN. Deborah Gorham, you're an Assistant to Associate Counsel to the President and former Assistant to Deputy Counsel to the President, Vincent Foster; is that correct?

Ms. GORHAM. I'm sorry, Chairman D'Amato?

The CHAIRMAN. You were formerly the Executive Assistant to the Deputy Counsel to the President, Vincent Foster?

Ms. GORHAM. I was.

The CHAIRMAN. Do you have a statement that you would like to give?

Ms. GORHAM. Yes, I do.

SWORN TESTIMONY OF DEBORAH L. GORHAM FORMER EXECUTIVE ASSISTANT TO DEPUTY COUNSEL TO THE PRESIDENT, VINCENT FOSTER

Ms. GORHAM. My name is Deborah Gorham. I now work at a private law firm in Washington, DC. I worked for Vincent Foster as his Executive Assistant for a very brief period of time, from March

8, 1993 until July 20, 1993. During that time we had a very professional working relationship. I had great respect for Vincent Foster, and his death was a tragic loss. It affected me deeply, and I feel great sympathy for the Foster family and hope that this matter will soon be put to rest. I'm here to cooperate fully, as best I can. Thank you.

The CHAIRMAN. Thank you very much, Ms. Gorham.

Linda Tripp.

Ms. TRIPP. Yes, Chairman.

The CHAIRMAN. Do you have a statement, Linda?

Ms. TRIPP. I do, briefly.

The CHAIRMAN. We would be happy to receive it.

SWORN TESTIMONY OF LINDA R. TRIPP
FORMER EXECUTIVE ASSISTANT TO
THE COUNSEL TO THE PRESIDENT

Ms. TRIPP. My name is Linda Tripp. From April 1993 through April 1994 I served as Executive Assistant to the Counsel to the President, Bernie Nussbaum. I worked in the same suite of offices as Vince Foster at the time he died. I am prepared at this time to answer any questions you have regarding the handling of documents following the death of Mr. Foster. Thank you.

The CHAIRMAN. May I ask you, do you still work at the White House?

Ms. TRIPP. I work for the Department of Defense at the Pentagon.

The CHAIRMAN. OK. First, we very much appreciate your cooperation, and if you have suffered any inconvenience as a result of any leaking—I don't believe to date your depositions have been leaked—we certainly are concerned.

I have been informed by staff that both of you have been most cooperative. We deeply appreciate your cooperation and understand the sensitivity of this matter.

I'm going to ask the Ranking Member if he thinks we should begin, or should we take a break now, since the vote is supposed to start in 5 minutes?

Senator SARBANES. Why don't we break.

The CHAIRMAN. OK. We will break. We'll probably resume at about 10:15, and Mr. Chertoff will ask you some questions.

We stand in recess until the conclusion of the vote.

[Recess.]

The CHAIRMAN. The Committee will come to order and we'll resume our hearing.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. Welcome, Ms. Gorham and Ms. Tripp. I understand you have before you copies of E-mail messages that were taken off of the files of the White House E-mail system about which I think we had some testimony from you yesterday in a deposition, and I would just like you to be able to refer to these to refresh your memory at various points during the questioning.

I know it's an unaccustomed experience for you to be testifying in front of a Senate Committee. I understand it's a little nerve-racking. It's nerve-racking even for some of the questioners some-

times so we'll proceed slowly. I want you to be comfortable. If you need a moment to consult with your attorneys, that's fine. That's not going to be a problem.

Just to make this clear, in July 1993, both of you were working in the White House Counsel's suite in the West Wing; correct?

Ms. GORHAM. Yes.

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Ms. Gorham, if you would pull the microphone a little bit closer, could you tell us who you were working for in the beginning of the month?

Ms. GORHAM. I worked for the late Vincent Foster.

Mr. CHERTOFF. Ms. Tripp, for whom did you work?

Ms. TRIPP. I worked for Bernie Nussbaum.

Mr. CHERTOFF. You were both in the same large room together?

Ms. GORHAM. Yes.

Ms. TRIPP. Yes.

Mr. CHERTOFF. I'd like to direct your attention to the week of July 20, 1993, the Tuesday—which I know was a day you'll remember—that Vincent Foster died.

Am I correct, Ms. Gorham, there was a lot of activity in general in the suite during the couple of days after Mr. Foster's death?

Ms. GORHAM. You are correct.

Mr. CHERTOFF. Ms. Tripp, is that your recollection as well?

Ms. TRIPP. Yes, it is.

Mr. CHERTOFF. Also, in order to frame the time of that week a little bit more readily, am I correct, Ms. Gorham, on that Friday you accompanied others to Arkansas for the funeral?

Ms. GORHAM. I did.

Mr. CHERTOFF. Is that true for you as well, Ms. Tripp?

Ms. TRIPP. It is.

Mr. CHERTOFF. I'm going to focus my questions on that 2-day period between the Tuesday of Mr. Foster's death and the Friday of the funeral and then the following Monday and Tuesday of the next week. Let me direct your attention first, Ms. Gorham, to, again, this period of time.

Do you recollect an occasion in which Mr. Nussbaum and Ms. Maggie Williams, the Chief of Staff to the First Lady, were in Mr. Foster's office after Mr. Foster's death?

Ms. GORHAM. I do.

Mr. CHERTOFF. Can you tell us, Ms. Gorham, if you can recall which day it was?

Ms. GORHAM. To the best I can recall, it was the week following Mr. Foster's funeral.

Mr. CHERTOFF. Are you positive of that?

Ms. GORHAM. It's simply based on recollection over the last 2 years.

Mr. CHERTOFF. Putting aside the particular day—and I should tell you we have independent evidence that the two of them were actually in the office on the 22nd, which would be the week of Mr. Foster's death—would you tell us what you recall about the occasion on which Mr. Nussbaum and Ms. Williams were in Mr. Foster's office?

Ms. GORHAM. Mr. Nussbaum had called me into Mr. Foster's office and asked me to state to him what were the file folders in the

file drawer that contained the President's and First Lady's personal and financial documents.

Mr. CHERTOFF. Was Mr. Nussbaum alone at that point?

Ms. GORHAM. He was not.

Mr. CHERTOFF. Who was with him?

Ms. GORHAM. Ms. Maggie Williams.

Mr. CHERTOFF. Where were they in the office when you were called in?

Ms. GORHAM. Mr. Nussbaum was seated in a club chair in front of Mr. Foster's desk, and Ms. Williams was standing on the other side of the table of the club chair, in front of Mr. Foster's sofa.

Mr. CHERTOFF. Would you tell us what you said to Mr. Nussbaum and what happened?

Ms. GORHAM. I stated yes, I would, and I walked around Mr. Foster's desk and pulled open the drawer that contained the President's and First Lady's personal and financial documents.

Mr. CHERTOFF. Where was that drawer?

Ms. GORHAM. If you were seated at Mr. Foster's desk, it was to his left. There were four drawers and a cabinet, and it was to the furthest left at the top.

Mr. CHERTOFF. When you pulled open the drawer, what did you see?

Ms. GORHAM. I saw Pendaflex folders and file folders, but I did not see an index that normally would have been there listing the names of the files.

Mr. CHERTOFF. What index are you referring to?

Ms. GORHAM. I maintained indexes for all file drawers, that I recall, and they listed the contents, the names of each of the folders in each drawer.

Mr. CHERTOFF. You say when you opened the drawer on that day in the presence of Mr. Nussbaum and Ms. Williams, that index was not where you normally kept it?

Ms. GORHAM. No, sir, it was not in that drawer.

Senator FAIRCLOTH. Would Ms. Gorham bring the microphone a little closer, please?

Ms. GORHAM. Yes.

Mr. CHERTOFF. Did you see that index anywhere else that day?

Ms. GORHAM. No, sir.

Mr. CHERTOFF. After you had opened the drawer, what did you do?

Ms. GORHAM. I started to read to Mr. Nussbaum the names of those file folders, at which time, after the first few names, he asked me to stop and stated to me that he would take care of that himself.

Mr. CHERTOFF. Then what did you do?

Ms. GORHAM. I left the office, Mr. Foster's office.

Mr. CHERTOFF. Now, do you remember how long Mr. Nussbaum and Ms. Williams remained in the office after you left?

Ms. GORHAM. I do not recall exactly how long it was.

Mr. CHERTOFF. Was there a point when you were called back in by Mr. Nussbaum?

Ms. GORHAM. I believe so. He called me back in.

Mr. CHERTOFF. Tell us what happened then.

Ms. GORHAM. I sat down at Mr. Foster's desk, and I opened his middle desk drawer and in there I found personal items, such as checks that were written to Mr. Foster and his life insurance policy.

Mr. CHERTOFF. Why did you do that?

Ms. GORHAM. I do not recall why I sat down at his desk and did that.

Mr. CHERTOFF. At the point that you went back in to open up the middle desk drawer, was Ms. Williams still there with Mr. Nussbaum?

Ms. GORHAM. She was.

Mr. CHERTOFF. What did you do after you opened the drawer?

Ms. GORHAM. I looked in, then I closed it and left the office.

Mr. CHERTOFF. Do you remember seeing, during this period of time, either the first or second time you went into the office, a box or boxes in the office?

Ms. GORHAM. I'm sorry, would you repeat the question?

Mr. CHERTOFF. During either the first time you went in or the second time you went in on this occasion with Mr. Nussbaum and Ms. Williams, did you see a box or boxes in the office?

Ms. GORHAM. Yes, sir, I did.

Mr. CHERTOFF. Did there come a point later that something happened with those boxes?

Ms. GORHAM. Yes, sir.

Mr. CHERTOFF. Tell us about that.

Ms. GORHAM. Mr. Nussbaum asked me to have the boxes moved out of Mr. Foster's office, and I asked Mr. Tom Castleton if he would carry them.

Mr. CHERTOFF. Who is Tom Castleton?

Ms. GORHAM. Mr. Castleton was a staff assistant in our office.

Mr. CHERTOFF. Can you tell us what happened?

Ms. GORHAM. Mr. Castleton picked them up and carried them out behind Ms. Williams. The last that I saw of them, noticed them, was in the door just outside of our suite.

Mr. CHERTOFF. Did you know where the boxes were going?

Ms. GORHAM. No, sir.

Mr. CHERTOFF. At any point on that day, getting your attention back to this index you've described, did you access your computer and revise that index?

Ms. GORHAM. I don't recall if I accessed my computer in any way. I do not recall looking at that index on the hard drive.

Mr. CHERTOFF. Now, let me turn to you, Ms. Tripp, for a moment. Were you around on the day that Maggie Williams, the Chief of Staff to the First Lady, and Mr. Castleton took a box or boxes out of Mr. Foster's office?

Ms. TRIPP. I recall Tom Castleton removing a box.

Mr. CHERTOFF. What do you recall about the circumstances of that?

Ms. TRIPP. My recollection is that the box or boxes were placed in front of Deb Gorham's desk. My next recollection is that Tom Castleton was physically carrying a box out of the suite.

Mr. CHERTOFF. What was your understanding at that time of where the box or boxes were going?

Ms. TRIPP. Until I asked, I had no idea where they were going.

Mr. CHERTOFF. Who did you ask?

Ms. TRIPP. I asked Deb Gorham and later Tom Castleton when he returned.

Mr. CHERTOFF. What did you learn?

Ms. TRIPP. That the boxes were going and had been delivered to the residence.

Mr. CHERTOFF. That's the White House residence?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Ms. Tripp, also to turn to you for a moment and focus your attention——

Senator BENNETT. Can we ask how big a box? Was it bigger than a bread box or a file cabinet? How many files are we talking about?

Ms. TRIPP. A box. I can't define the size of the box. It wasn't a two-man box; one person could easily carry the box.

Senator BENNETT. Were these files standing vertically? Were they lying down? Was the box 10 inches tall, so that the files could be vertical, or was it 3 inches tall? How many documents were in the box is what I'm after. I really don't care about the size of the box.

Ms. TRIPP. I don't know.

Mr. CHERTOFF. Ms. Gorham, maybe you know. Do you remember how big the box was or what it was like?

Ms. GORHAM. To the best that I can recall, the size of the boxes were the size of a small box that would hold approximately four or five reams of photocopy paper.

Senator BENNETT. OK. That's helpful. Thank you. I'm sorry to interrupt.

Mr. CHERTOFF. Let me keep your attention focused on this same time period, Ms. Tripp, this 2-day period between Mr. Foster's death and the funeral. Do you remember Susan Thomases making calls to Bernard Nussbaum during that period of time?

Ms. TRIPP. I have a recollection of speaking to Susan Thomases during that time.

Mr. CHERTOFF. What about the First Lady, do you have a recollection of her having a telephone conversation with Mr. Nussbaum?

Ms. TRIPP. I don't have a clear recollection of the First Lady speaking to him during that timeframe.

Mr. CHERTOFF. Do you have any kind of a recollection of it?

Ms. TRIPP. I know at one point there was a telephone conversation between Mr. Nussbaum and Mrs. Clinton. I don't recall when that was.

Mr. CHERTOFF. Do you recall that it occurred during this period of time in the day or two after Mr. Foster's death?

Ms. TRIPP. I thought so, yes.

Mr. CHERTOFF. Do you remember what the subject of that conversation was, or did you ever learn the subject of that conversation between the First Lady and Mr. Nussbaum in the day or two after Mr. Foster's death?

Ms. TRIPP. No, sir, I would have had no reason to know that.

Mr. CHERTOFF. Do you remember how long the conversation was?

Ms. TRIPP. No, sir, I don't.

Mr. CHERTOFF. Now, Ms. Tripp, I also want to ask you, in this period of time, do you recall an occasion when you had a conversa-

tion with Ms. Gorham concerning something that was seen in the bottom of Mr. Foster's briefcase?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Would you tell us what you recall about the circumstances of that conversation?

Ms. TRIPP. I am uncertain as to what day and what time this conversation took place.

Mr. CHERTOFF. When you say what day, do you mean it could have either been the Wednesday or Thursday following Mr. Foster's death?

Ms. TRIPP. To the best of my recollection, it was one of those two days, yes, sir.

Mr. CHERTOFF. Tell us about the circumstances.

Ms. TRIPP. The conversation followed Deborah's return to the reception area suite after having been called into one of the two principals' offices——

Mr. CHERTOFF. When you say—I'm sorry, go ahead.

Ms. TRIPP. —either Mr. Nussbaum's or Mr. Foster's. I'm unclear as to which. When she returned, I asked her had there been anything found; was there any indication as to why, a note, anything, and she said no. I pursued it and asked did you look everywhere? Did you look in the briefcase? She said the briefcase was empty. There was nothing in there but a bunch of little yellow sticky notes.

Mr. CHERTOFF. Now, you say this conversation occurred after Ms. Gorham came out of a meeting that either took place inside Mr. Nussbaum's office or inside Mr. Foster's office?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Does the fact that the conversation you had with her had to do with searching for any note or searching for an indication of motivation help you to remember that it's likely this meeting occurred in Mr. Foster's office?

Ms. TRIPP. I just don't know, sir.

Mr. CHERTOFF. You would agree with me, at least, that there was no reason to search in Mr. Nussbaum's office for evidence of a note or anything of that sort; correct?

Ms. TRIPP. Again, I don't know. I don't know what had transpired prior to that, whether something had perhaps been moved to Mr. Nussbaum's office. I clearly had no idea.

Mr. CHERTOFF. But your recollection is, in any event, after Ms. Gorham came out of this meeting, you initiated the questions about whether there had been a search for a note or some other kind of indication of why Mr. Foster killed himself?

Ms. TRIPP. Absolutely.

Mr. CHERTOFF. It was in connection with that that Ms. Gorham said to you—again, as precisely as you can recall—what about the briefcase?

Ms. TRIPP. I don't recall Deborah saying she looked in the briefcase. I recall her saying either "it was empty" or "there's nothing in there" followed by "except for a bunch of little yellow sticky notes"; she may have said "at the bottom." My understanding is there was nothing else in there but scattered little yellow sticky notes.

Mr. CHERTOFF. Ms. Gorham, do you recall this conversation with Ms. Tripp?

Ms. GORHAM. No, I'm sorry, I do not.

Mr. CHERTOFF. You can't help us any more with this conversation?

Ms. GORHAM. No, I just don't recall the conversation.

Mr. CHERTOFF. Let me take you forward to Monday, which is July 26, which is the Monday of the following week. Ms. Gorham, do you remember on the afternoon of that day Mr. Neuwirth, who was one of the Associate Counsel to Mr. Nussbaum, coming out of Mr. Foster's office with a briefcase?

Ms. GORHAM. I recall Mr. Neuwirth coming out of Mr. Foster's office with a briefcase. I don't recall if it was in the afternoon or the morning.

Mr. CHERTOFF. Where did he go with the briefcase?

Ms. GORHAM. He went into Mr. Nussbaum's office and slammed the door.

Mr. CHERTOFF. Tell us what you saw of the comings and goings thereafter.

Ms. GORHAM. To the best of my memory, Mr. Neuwirth came out and asked one of the assistants to find Mr. Nussbaum. Later, Mr. Nussbaum returned to the office, went into his office and slammed the door. A few minutes later, Mr. Nussbaum opened the door, exited, slammed the door and walked down the hallway.

Mr. CHERTOFF. Then what else happened?

Ms. GORHAM. Then I believe Mr. Burton, Bill Burton, might have appeared next, going into Mr. Nussbaum's office, then other people, I think, came in straggling, but I don't recall who they were.

Mr. CHERTOFF. Was the office closed—was the door to Mr. Nussbaum's office closed except for people coming and going?

Ms. GORHAM. Yes, sir.

Mr. CHERTOFF. Ms. Tripp, do you remember this occurrence on Monday?

Ms. TRIPP. I remember Steve Neuwirth opening the door, yes.

Mr. CHERTOFF. Do you remember him asking for somebody?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Do you remember Mr. Burton coming in?

Ms. TRIPP. I didn't have an independent recollection of Mr. Burton coming back to our suite until I went over the E-mail traffic.

Mr. CHERTOFF. That refreshed your memory?

Ms. TRIPP. It did.

Mr. CHERTOFF. Do you remember the First Lady coming into Mr. Nussbaum's office during that same period?

Ms. TRIPP. Again, I did not have an independent recollection until I read the E-mail traffic.

Mr. CHERTOFF. But now you do remember that?

Ms. TRIPP. Yes. Yes, sir, I do.

Mr. CHERTOFF. In that same period of coming and going, did you have a discussion with Mr. Clifford Sloan about something?

Ms. TRIPP. Are you referring to that particular time period?

Mr. CHERTOFF. Yes.

Ms. TRIPP. No, sir.

Mr. CHERTOFF. How about later that day?

Ms. TRIPP. Later that evening I did.

Mr. CHERTOFF. Tell us about that.

Ms. TRIPP. It was later in the evening; I was in the reception area. The door to Bernie's office was closed. At one point in time Cliff Sloan came out of Bernie's office and asked me if it was possible to remove one of the typewriters to bring back into Bernie's office.

Mr. CHERTOFF. What did you say?

Ms. TRIPP. I asked him why it was necessary to try to do that when we had five computers in the outer office.

Mr. CHERTOFF. What did he say?

Ms. TRIPP. He wanted a typewriter.

Mr. CHERTOFF. So what happened?

Ms. TRIPP. We had two typewriters and I explained to him, because of the way they were configured and plugged in under all the massive furniture with the taping to the carpet and the commingling of all the myriad cable underneath, that it would be a very difficult endeavor, and I offered to get him a typewriter from elsewhere.

Mr. CHERTOFF. What did he say?

Ms. TRIPP. He indicated that was not something he chose for me to do at that point and went back into the office.

Mr. CHERTOFF. Went back into Mr. Nussbaum's office?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Did he close the door?

Ms. TRIPP. He did.

Mr. CHERTOFF. At that point, were Mr. Nussbaum and Mr. Neuwirth still in Mr. Nussbaum's office?

Ms. TRIPP. It was my understanding those were the two others in the office.

Mr. CHERTOFF. You're quite sure it was Mr. Sloan who came out that evening and not Mr. Neuwirth?

Ms. TRIPP. To the best of my recollection, it was Mr. Sloan.

Mr. CHERTOFF. I also want to keep your attention, Ms. Gorham, focused on this same afternoon or evening.

After you had observed the briefcase being taken out of Mr. Foster's office and the various comings and goings, did there come a time when Mr. Nussbaum asked you to come into his office either later that day or early the next morning?

Ms. GORHAM. Yes.

Mr. CHERTOFF. Would you tell us about that?

Ms. GORHAM. Mr. Nussbaum asked me to sit in the chair on the opposite side of his table and asked me if I had seen anything in the bottom of Vince's briefcase. I told him that I had only seen the color yellow, and I had seen the top of the Goldcraft third-cut folder, and that was all I had seen.

Mr. CHERTOFF. When you say a Goldcraft third-cut folder, do you mean a folder like this, a Manila-type folder?

Ms. GORHAM. Yes, sir.

Mr. CHERTOFF. You told Mr. Nussbaum that you had seen that in Mr. Foster's briefcase at an earlier time?

Ms. GORHAM. I told him that I had seen the top of that cut of the folder.

Mr. CHERTOFF. What did Mr. Nussbaum say to you?

Ms. GORHAM. He asked me repeatedly what I had seen. He asked me if the yellow could have been paper. Could it have been lined paper? Could it have been—what it could have been? I told him repeatedly, numerous times, that all that I had seen out of the corner of my eye was the color yellow and the top of a Goldcraft third-cut folder such as you have.

Mr. CHERTOFF. Was there anybody else in the room during this discussion with Mr. Nussbaum?

Ms. GORHAM. Not that I recall.

Mr. CHERTOFF. Have you previously described this as an interrogation?

Ms. GORHAM. That is exactly how I have described it and that is what took place.

Mr. CHERTOFF. Would you agree that he was adamant and very forceful in putting his questions to you?

Ms. GORHAM. Indeed I would.

Mr. CHERTOFF. I take it this experience is still very vivid in your mind?

Ms. GORHAM. Absolutely.

Mr. CHERTOFF. Do you remember how long this interrogation took?

Ms. GORHAM. I do not recall the length of the meeting.

Mr. CHERTOFF. Let me now ask you if you can direct your attention to the E-mails. I'm going to take you through the E-mails, if we can put them up on the Elmo. For the record, these are Z1206 through Z1214. To the best of your recollection—I know it's a couple of years later. I'm going to ask you just briefly to go through these with us.

I should say for the record we got these from the White House, I guess, a little over a week ago. I believe these come from what are called dump files, which is to say some repository deep within the system. There's some magic that certain consultants can perform to bring this stuff up even after it is no longer in daily use. At the top, we have on the record 27 July 1993, 10:29 a.m. That would be the day after these events with the briefcase; correct?

Ms. GORHAM. That's correct.

Mr. CHERTOFF. Ms. Gorham, is it fair to say since you initiated the first one of these communications that this communication where you say "everything from his briefcase is missing" occurred after you had had your session with Mr. Nussbaum where he questioned you about the briefcase?

Ms. GORHAM. I believe so.

Mr. CHERTOFF. Do you recall whether in that session he actually opened the briefcase and showed you that there was nothing in it?

Ms. GORHAM. As of today, I don't recall if he did or did not.

Mr. CHERTOFF. Would you presume he did, based on your initial E-mail message here?

Ms. GORHAM. Yes, sir, I think it's fair to presume that.

Mr. CHERTOFF. You begin by saying "everything from his briefcase is missing," then, Ms. Tripp, you respond by saying "the little yellow sticky, or was there more?"

Now, your reference to the little yellow sticky, what does that refer to here?

Ms. TRIPP. That refers directly back to our initial conversation referring to little yellow stickies at the bottom of the briefcase.

Mr. CHERTOFF. In other words, it refers back to the conversation you testified about a few moments ago where Ms. Gorham had come out and you had asked her questions about what was in the briefcase and she had indicated nothing but little yellow stickies?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Essentially, you're commenting on July 27 about that earlier conversation some days before?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. You respond, Ms. Gorham, by saying "I do not know what else was in there, but the bag is totally cleaned out except for one collar stay."

Is it fair to say that's a reference to something Mr. Nussbaum had shown you shortly before you did this E-mail?

Ms. GORHAM. Yes, sir, it is.

Mr. CHERTOFF. Then, Ms. Tripp, you respond by saying "it seems whatever was uncovered was uncovered by" and we've masked something here. Is it fair to say that was a reference to Mr. Neuwirth?

Ms. TRIPP. Yes, that was.

Mr. CHERTOFF. So it would read "it seems whatever was uncovered was uncovered by Mr. Neuwirth, who summoned our boss"—that would be Mr. Nussbaum?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. —"who then summoned BB"—that would be Mr. Burton?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. "—who then summoned H." That was the First Lady?

Ms. TRIPP. Yes, it was.

Mr. CHERTOFF. "And whatever it was provoked a need for note taking." What does that reference to a need for note taking refer to?

Ms. TRIPP. In reading these electronic mail transmissions, I had no independent recollection to what I was referring at that time. However, as I read over them, it refreshed my memory somewhat, and I do believe that was my reference to the previous evening and Cliff Sloan's request for a typewriter.

Mr. CHERTOFF. Then it goes on to say "and had to do, I presume, with the burn bag. I can't imagine that anyone as meticulous as this individual was would have left anything he did not intend to be found."

Who's the individual?

Ms. TRIPP. That is Mr. Foster.

Mr. CHERTOFF. Just to complete the thought, I want to go to the next one where, Ms. Gorham, you say "what provoked COS to call BWN was the briefcase." Is COS another reference to Stephen Neuwirth?

Ms. GORHAM. It is.

Mr. CHERTOFF. Who is BWN?

Ms. GORHAM. Bernard Nussbaum.

Mr. CHERTOFF. You go on to say "once BWN arrived"—you have to go to the next page—"I forgot who went into VWF's office"—that would be Mr. Foster's office, Ms. Gorham?

Ms. GORHAM. Yes.

Mr. CHERTOFF. —"to get the burn bag, but they must feel like a slapstick comedy by not returning the burn bag along with the briefcase." Focusing your attention on these two E-mail fragments I read you, one in which you indicate, Ms. Tripp, that "whatever it was provoked a need for note taking and had to do, I presume, with the burn bag," and the other where you respond, Ms. Gorham, by saying "I forgot who went into VWF's office to get the burn bag, but they indicated they didn't return the burn bag along with the briefcase."

Does this refresh the memory of either of you that on the previous night, July 26, in addition to the briefcase being taken out of Mr. Foster's office, a burn bag was taken out of Mr. Foster's office and moved into Mr. Nussbaum's office?

Ms. GORHAM. At this time it does not refresh my memory.

Mr. CHERTOFF. What about you, Ms. Tripp?

Ms. TRIPP. No, sir, it does not.

Mr. CHERTOFF. You don't have a memory of a burn bag coming out?

Ms. TRIPP. I don't, sir.

Mr. CHERTOFF. You'll agree with me, though, that these E-mails which were prepared the following day would seem to indicate that on Monday, July 26, in addition to a briefcase coming out of Mr. Foster's office, there was a burn bag that was brought out of Mr. Foster's office. Does that seem a reasonable interpretation of the E-mails?

Ms. GORHAM. I think it is fair to say that that was my recollection at the time when this electronic mail message was sent.

Mr. CHERTOFF. What about you, Ms. Tripp?

Ms. TRIPP. Yes, sir, I believe that was what I thought at the time.

Mr. CHERTOFF. Let me move on to the next page, which is 1212. Continuing on along the first line, it says "why on God's green earth would the burn bag not have been sifted through immediately"—I take it when you say "immediately" you mean immediately after Mr. Foster's death?

Ms. TRIPP. That evening or the following day.

Mr. CHERTOFF. This is your E-mail, Ms. Tripp; you prepared this one; right?

Ms. TRIPP. I did, yes, sir.

Mr. CHERTOFF. —"and not days later?" That was in reference to the fact that, presumably, you saw the burn bag on the Monday being taken into Mr. Nussbaum's office?

Ms. TRIPP. I'm not certain that I saw it. I make reference to the fact that I understood it to be the fact. I can't say today whether that is true.

Mr. CHERTOFF. At least that appears to be what the E-mail indicates.

Ms. TRIPP. I'm sorry?

Mr. CHERTOFF. That appears to be what the E-mail indicates.

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. You go on to say "and of course, it would be secured along with all else and not left hanging around in an unsecured area."

Now, let me move to page 1213, which is Ms. Gorham's response. Again, it's the same day, July 27. It's now 10:47 a.m. and, Ms. Gorham, you say "on Wednesday"—that presumably is the preceding Wednesday?

Ms. GORHAM. On the Wednesday following Mr. Foster's death.

Mr. CHERTOFF. —"I told Bernie that VWF"—that's Mr. Foster?

Ms. GORHAM. It is.

Mr. CHERTOFF. —"had placed shredded remnants of personal documents in the bag." Now, in this sentence, to what does "the bag" refer?

Ms. GORHAM. I believe in this instance it refers to the burn bag.

Mr. CHERTOFF. Then you go on to say "on Thursday, I told Bernie in front of everybody that shredded remnants were in the bag." Again, would you say "the bag" here refers to the burn bag?

Ms. GORHAM. I would.

Mr. CHERTOFF. Then——

The CHAIRMAN. Can I ask who was "everybody," if you recall?

Ms. GORHAM. I'm sorry, sir?

The CHAIRMAN. You say "on Thursday, I told Bernie in front of everybody that shredded remnants were in the bag." Do you recall who those people were, everybody?

Ms. GORHAM. No, sir. I would only assume it was during a meeting that we had regarding comportment and interrogation by the Park Police, possibly the following day.

Mr. CHERTOFF. Let's put it in context. Let's go to the very last message that we have, which is your response, Ms. Tripp, to Ms. Gorham's discussion about the Wednesday and Thursday and telling Mr. Nussbaum about the shredded remnants. You respond on page 1214, "I recall the shredded talk, because when we spoke to"—and we've blanked the name out, but that's Mr. Neuwirth; right?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. —"he briefed us on comportment and interrogation." You mentioned that that was on Wednesday evening, right? So it took until Monday to figure out it should be looked at. Now, does that help you, both of you, fix in your mind that there was a conversation on the previous Wednesday, when you were preparing or being prepared for the Park Police interviews on the next day, in which Ms. Gorham brought up her observation that Mr. Foster had torn up some personal documents and put them in the burn bag? Does that refresh your recollection, Ms. Tripp?

Ms. TRIPP. It does to my satisfaction, yes, sir.

Mr. CHERTOFF. You recall that was brought to Mr. Nussbaum's attention and Mr. Neuwirth's attention the previous Wednesday evening before the Park Police interviews on Thursday?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Ms. Gorham, do you have a recollection beyond what's in the E-mails about this?

Ms. GORHAM. No, sir. As of today, I do not recall this electronic mail message.

Mr. CHERTOFF. But I take it you have no doubt that the E-mails correctly reflected your memory at the time they were prepared?

Ms. GORHAM. At that time, yes, sir.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Ms. Gorham and Ms. Tripp, were your desks located in this foyer that's outside of Bernie Nussbaum's and Vince Foster's office of the White House, what we've been calling the White House Counsel's suite?

Ms. TRIPP. Yes, sir.

Senator SARBANES. Is anyone else located in that area? Was anyone else located there besides the two of you?

Ms. TRIPP. Are you directing that to me, sir?

Senator SARBANES. Either one.

Ms. TRIPP. Yes, I'll say that there were several other desks.

Senator SARBANES. Was Ms. Pond at one of those desks?

Ms. TRIPP. Yes, sir.

Senator SARBANES. Who was the other, this young fellow you were telling me about?

Ms. TRIPP. Right. Tom Castleton's desk was, entering the office, located at the left rear.

Senator SARBANES. How far apart were all of you?

Ms. TRIPP. Very close.

Senator SARBANES. Referring to the two of you; were your desks next to one another?

Ms. TRIPP. They were diagonally across from one another.

Senator SARBANES. But not a great distance apart, I take it?

Ms. TRIPP. No, sir.

Senator SARBANES. These E-mails were, in effect, a conversation the two of you were having back and forth over your machines?

Ms. TRIPP. Yes, sir.

Senator SARBANES. So you were both sitting at your desk and talking with one another over your machines; is that correct?

Ms. GORHAM. Yes, sir, we were communicating in that way.

Senator SARBANES. Did you do that, generally speaking, as a matter of course?

Ms. GORHAM. No, sir, not as a matter of course. This was a time that was very hectic, and we thought it would have been more appropriate to communicate it electronically than to have stood at each other's desk and spoken.

Senator SARBANES. Was other activity going on in the office at the time?

Ms. GORHAM. I don't recall, but I have no doubt that there certainly was.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes. Ms. Tripp, good morning.

Ms. TRIPP. Good morning.

Mr. BEN-VENISTE. Good morning, Ms. Gorham.

Ms. GORHAM. Good morning.

Mr. BEN-VENISTE. I'd like to pursue some of the areas that were previously covered with you, and having in mind that we have taken your depositions and we have an extensive body of information about what you've testified to already, I'm going to go over

some of that with you again this morning in the opening of our hearing.

First of all, Ms. Tripp, with respect to the question of the yellow stickies, I want to identify the time with as great a precision as possible that you had the conversation with Ms. Gorham in which she mentioned yellow stickies. All right?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. We are in the week immediately following Mr. Foster's suicide. The general emotional level in the office, I take it, was high?

Ms. TRIPP. That is understated; yes, sir.

Mr. BEN-VENISTE. Would you please provide a description of what the emotional state of the people in the White House Counsel's Office was on July 21 and 22, 1993?

Ms. TRIPP. It certainly was not limited to the Counsel's Office. I believe this touched on all of whom had occasion to know Vince Foster within the White House compound, and that state was one of shock, deep grief, disbelief.

Mr. BEN-VENISTE. You were essentially going through the motions, but affected deeply by the shock of what had happened. Is that fair to say?

Ms. TRIPP. That is fair to say.

Mr. BEN-VENISTE. Now, let me focus on the time when the Park Police, the FBI, the Secret Service and the Department of Justice all had representatives who met with Mr. Nussbaum and other members of the Counsel's staff in Mr. Foster's office. Do you have that point in mind? That was on July 22, 1993.

Ms. TRIPP. Sir, I don't have an independent recollection of what day that was. I do have a recollection of it occurring.

Mr. BEN-VENISTE. We have it pretty well established that that was on July 22nd.

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. There were at least 13 people there who remember it as being July 22 in the afternoon. Now, I'd like to direct your attention, then, to the conversation you had with Ms. Gorham in which you asked her, if I understand your testimony, whether they, meaning everyone who had been through Mr. Foster's office up to this point, had found a note and whether they had looked thoroughly for such a note; correct?

Ms. TRIPP. Yes, sir, that's an accurate statement.

Mr. BEN-VENISTE. By this time, we know that Mr. Foster's briefcase had been emptied of the files that were in it as of July 20, but now you're asking Ms. Gorham, if I understand your testimony, did they look in the briefcase?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. Ms. Gorham said to you yes, the briefcase is empty except for some yellow stickies?

Ms. TRIPP. Essentially that is what she said.

Mr. BEN-VENISTE. Now, you have a clear recollection of that?

Ms. TRIPP. I do.

Mr. BEN-VENISTE. Ms. Gorham, if I understand your testimony, you do not have as clear a recollection, but you know that there was something yellow in the briefcase?

Ms. GORHAM. That's correct. I do not have a clear recollection, but I did notice something the color of yellow.

Mr. BEN-VENISTE. So now we have established that you, in reporting to Ms. Tripp, who may have a clearer recollection of what you said to her at the time, having in mind that everybody was in a high emotional state, we at least establish that as of July 22, there are some yellow pieces of paper in the bottom of the briefcase which Ms. Gorham has dismissed as not being the note. Essentially, you've asked have you looked carefully for the note, and Ms. Gorham says there's no note; there's just some yellow stickies; right?

Ms. TRIPP. She didn't answer specifically there is no note. She said——

Mr. BEN-VENISTE. It's empty at the present time except for——

Ms. TRIPP. Yes.

Mr. BEN-VENISTE. —the yellow stickies. Now, let me go to the question of these E-mails that you sent back and forth to each other electronically on July 27 in this conversation that you had while each of you were sitting at your computers.

First of all, Ms. Gorham, on document 1206, the first message in this conversation, "everything from his briefcase is missing." Now, that's consistent with the fact that by July 27, all the files had been taken out of his briefcase and now the yellow stickies or whatever yellow you saw in there was also out of the briefcase?

Ms. GORHAM. Yes, sir, that would be consistent with the interpretation of this.

Mr. BEN-VENISTE. Then, on document 1207, Ms. Tripp, you say "the little yellow sticky, or was there more," and this refers back to your conversation of the previous week when Ms. Gorham made the statement about the yellow stickies?

Ms. TRIPP. Yes, it does.

Mr. BEN-VENISTE. Then you answer in document 1208, Ms. Gorham, "I do not know what else was in there, but the bag is totally cleaned out except for a collar stay"; is that correct?

Ms. GORHAM. Yes, sir, that's how the text reads.

Mr. BEN-VENISTE. Now, Ms. Tripp, in document 1209, you say "it seems whatever was uncovered was uncovered by" Mr. Neuwirth, who summoned your boss, Mr. Nussbaum, who then summoned Mr. Burton, who then summoned Mrs. Clinton, and "whatever it was provoked a need for note taking." That phrase, I take it, is still somewhat mysterious to you?

Ms. TRIPP. It is.

Mr. BEN-VENISTE. You were asked to stay late that night?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. Is it possible that you were there to assist in any dictation or other things that might have been needed?

Ms. TRIPP. I assumed I was there for whatever Bernie Nussbaum asked me to do.

Mr. BEN-VENISTE. So the note taking may or may not refer to your having to be on hand and standing by?

Ms. TRIPP. To be perfectly frank, I believe this was a speculation on my part.

Mr. BEN-VENISTE. Then we get to the real speculation in these E-mails, which is the burn bag, and the next phrase is "provoked

a need for note taking and had to do, I presume, with the burn bag."

Now, I want to focus on this presumption. You were speculating at this point——

Senator DODD. Can we leave that up? Richard, just a second, why don't you get that other piece of—OK.

Mr. BEN-VENISTE. You were speculating, Ms. Tripp——

Mr. BEHRE. Excuse me, Mr. Ben-Veniste, can we have the redacted version put up?

The CHAIRMAN. Take that down. Keep the redacted version up.

Mr. BEN-VENISTE. I'm on document 1209 and I'm getting to the speculation at this point about the burn bag.

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. You knew that something had been found; correct?

Ms. TRIPP. I believe at this point in time, I knew something had been found.

Mr. BEN-VENISTE. You knew that it was important?

Ms. TRIPP. I believed it was of significance, yes.

Mr. BEN-VENISTE. You were presuming that it had been found in the burn bag; correct? Because you knew that the briefcase was empty except for the yellow stickies and, at that point, you didn't associate the yellow paper with what had been found?

Ms. TRIPP. Yes, this was sheer speculation on my part.

Mr. BEN-VENISTE. OK. Now, let's go to document 1210 and "what provoked" Mr. Neuwirth "to call Mr. Nussbaum was the briefcase. Once Bernie Nussbaum arrived, I forgot who went into Vince Foster's office to get the burn bag, but they must have been a slapstick comedy not returning the burn bag along with the briefcase."

Now, Ms. Gorham, you were at this point joining in the speculation because you didn't know that what had been found had apparently been found in the briefcase; correct?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. You then continue to discuss why the burn bag hadn't been sifted through immediately and you are continuing, are you not, Ms. Tripp, this speculation which has originated with your thought that maybe what was found was found in the burn bag?

Ms. TRIPP. Are we going back to the——

Mr. BEN-VENISTE. I'm on document 1212.

Ms. TRIPP. OK. Just one moment, sir. I'm sorry, could you repeat the question?

Mr. BEN-VENISTE. On document 1212 you were going along with the speculation, taking it a step further, presuming that what had been found was found in the burn bag and then speculating further that if it had been found there, my goodness, why hadn't it been secured?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. Now—and this is very important, I think—when we get to document 1213, Ms. Gorham, you say "on Wednesday, I told Bernie that Mr. Foster had placed shredded remnants of personal documents in the bag. On Thursday, I told Bernie in front of everybody that shredded documents were in the bag." We're talking about either Wednesday, the day after Mr. Foster's

death, or Thursday, two days later, that you had this conversation with Mr. Nussbaum?

Ms. GORHAM. Yes.

Mr. BEN-VENISTE. In that conversation, did you essentially attempt to rack your memory and try to recall everything that Mr. Foster had done in the days before his death, that Monday and Tuesday?

Ms. GORHAM. I don't recall if I was asked by Mr. Nussbaum to rack my memory, but I do recall the conversation regarding what I had seen in the briefcase and what else I knew and if I had seen anything else.

Mr. BEN-VENISTE. Now, I'm talking about immediately after Mr. Foster's death, OK? I'm talking about the conversation that you had with Mr. Nussbaum in which, for example, you mentioned to Mr. Nussbaum that Mr. Foster had placed some personal letters in his outbox to be mailed?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. You remember that?

Ms. GORHAM. Yes, sir.

Mr. BEN-VENISTE. Then, in addition to that, you remember that Mr. Foster had done something in terms of cleaning out his personal records?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. Tell us, please, what you remembered and what you told Mr. Nussbaum in front of everyone about Mr. Foster cleaning out his records.

Ms. GORHAM. I simply expressed to Mr. Nussbaum that it was a very slow day, and Mr. Foster was sending out mail of a personal nature. I told him there was a possibility when I was in his office a couple of times on the Monday previous to his death that, indeed, he could have been placing shredded envelopes of a personal nature into his burn bag.

Mr. BEN-VENISTE. When you say "shredded," what do you mean by that?

Ms. GORHAM. Normally, I certainly had a habit—and possibly Mr. Foster did, too—that when we placed paper into our burn bag, we would tear it in half.

Mr. BEN-VENISTE. So you're not saying that it was mutilated. You just mean that it was torn in half——

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. —and placed in the receptacle. Now, I want to ask you if you can remember with any clarity whether you have a mental image of Mr. Foster placing that material in the burn bag, or is it possible that he placed it in the trash?

Ms. GORHAM. No, sir, I have no mental clarity that he placed it in either the burn bag or the trash.

Mr. BEN-VENISTE. So you were speculating that it might have been the burn bag because that's what you would have done?

Ms. GORHAM. That's correct. Mr. Foster and I had a previous conversation that I would place all of my trash, such as food or drink receptacles, into my garbage can, but that I would place all material of any kind that was on paper into my burn bag.

Mr. BEN-VENISTE. As far as Mr. Foster is concerned, however, you have no mental picture about whether the things you men-

tioned he had discarded when he cleaned out these personal effects went into either the burn bag or the trash?

Ms. GORHAM. No, sir, not at this time. I only would assume that he would have placed paper into his burn bag.

Mr. BEN-VENISTE. But that's not based on anything you remember having seen Mr. Foster do on that day?

Ms. GORHAM. I'm not recalling at this time.

Mr. BEN-VENISTE. Now, here's what I would like to ask you. What were the kinds of material you remember Mr. Foster discarding on that day?

Ms. GORHAM. I cannot tell you that I can recall today what documents or types of paper he discarded that day.

Mr. BEN-VENISTE. Do you remember anything about what he threw away?

Ms. GORHAM. No, not as of today I do not.

Mr. BEN-VENISTE. Did you recall at one point as to whether he had any credit card charges or other receipts that he discarded?

Ms. GORHAM. No, sir, I cannot tell you if he did or did not.

Mr. BEN-VENISTE. Let me ask that Exhibit 140 be placed on our machine. This is Sylvia Mathews' list of the things in the trash that she had recovered. Do you see among the materials that were recovered were many credit card receipts?

Ms. GORHAM. I do.

Mr. BEN-VENISTE. Is this the type of material which Mr. Foster discarded when he was going through his things and discarding items on the day of his death or the day before?

Ms. GORHAM. I'm sorry, sir, I do not recall if, indeed, credit card receipts——

Mr. BEN-VENISTE. Ms. Tripp, do you remember the statement that Ms. Gorham made in the presence of others about what Mr. Foster had discarded?

Ms. TRIPP. Refreshed by the electronic mail once again, I do have a recollection.

Mr. BEN-VENISTE. What is that recollection?

Ms. TRIPP. That she had seen Mr. Foster shred paper and put it in the burn bag.

Mr. BEN-VENISTE. Do you recall anything that Ms. Gorham then mentioned about the nature of that material?

Ms. TRIPP. I thought Deborah had said it was personal papers, bills and receipts.

Mr. BEN-VENISTE. Now, you had never been shown this document before today, if I understand correctly—or, have you ever been shown the list of items that Ms. Mathews had scheduled, which is Z140?

Ms. TRIPP. You're referring to the document on the Elmo right now?

Mr. BEN-VENISTE. Yes.

Ms. TRIPP. No, sir, I have not seen it.

Mr. BEN-VENISTE. So now that you see many credit card receipts, do you think it is possible that, in fact, that which Ms. Gorham told Mr. Nussbaum and others immediately following Mr. Foster's death had been discarded by him, possibly put in the burn bag, really includes the material that is reflected in Z140?

Ms. TRIPP. It appears that way to me, sir.

Mr. BEN-VENISTE. Mr. Chairman, we also have another schedule of the material that was retrieved by Ms. Mathews from the trash, and that is Mr. Spafford's schedule, which also shows receipts and credit union slips. That has been marked as Spafford Exhibit 1 for this hearing, and it is page 5 of that exhibit.

You notice, again, Ms. Tripp, that there are receipts and credit union slips that are reflected?

Ms. TRIPP. I see the arrows indicated in that, yes, sir.

Mr. BEN-VENISTE. Thank you very much.

Ms. TRIPP. You're welcome.

Mr. BEN-VENISTE. To bring closure to this issue, it may very well be, Ms. Tripp, that the materials which were thought to have been discarded in the burn bag were, in fact, thrown in the trash and indeed were recovered by Ms. Mathews on the night of July 20? At least two of the items seem to be what Ms. Gorham was talking about, to the best of your recollection?

Ms. TRIPP. To the best of my recollection, bills, receipts and personal documents were torn up and put in a burn bag.

Mr. BEN-VENISTE. Thank you.

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. While you were doing all of this speculating between desks on your electronic mail, it wasn't with any malicious intention, was it?

Ms. TRIPP. Malicious in what way, sir?

Mr. BEN-VENISTE. It wasn't with any malicious intention? I'm suggesting that your interest was simply to try to find out as much as you could because you cared about Mr. Foster, and you cared deeply to know any details that might help you understand why he died?

Ms. TRIPP. Yes, sir; that's fair.

Mr. BEN-VENISTE. At some point you asked Mr. Nussbaum, did you not, what had been found and where had it been found?

Ms. TRIPP. I don't believe I ever asked Bernie where it had been found, directly. I did ask him what had been found.

Mr. BEN-VENISTE. What did he tell you?

Ms. TRIPP. His answer was that a torn note or letter had been found.

Mr. BEN-VENISTE. Did he say where it had been found?

Ms. TRIPP. I don't recall if at that time I was aware of where it had been found.

Mr. BEN-VENISTE. I believe I asked you if you would turn to page 65, and I recognize you may be nervous here this morning——

Mr. BEHRE. Of which one?

Mr. BEN-VENISTE. Of yesterday's deposition.

Mr. BEN-VENISTE. I'm sorry, it's page 55. I apologize.

Mr. BEHRE. Any particular line?

Mr. BEN-VENISTE. Yes, at line 7. I'll read it to you. It says:

Question: And when Mr. Nussbaum explained to you shortly after—that is, shortly after the finding of the note—in response to your direct question of him that a torn-up note had been found in Mr. Foster's briefcase, did that strike you at the time as being inconsistent with anything that you knew up to that point?

Answer: Quite the contrary.

Question: That seemed to explain everything, all of the pieces of information that you were getting from different sources?

Answer: Exactly.

Ms. TRIPP. Right. I'm sorry, I must have misunderstood you. What I meant earlier in response to your question was I am not certain at the time I asked Mr. Nussbaum what had been found if at that very time he told me it was the briefcase. When I did learn—and I'm not certain at what point that was—that the torn letter or note had been found in the briefcase, at that point, it made perfect sense to me.

Mr. BEN-VENISTE. So all of this E-mail speculation was then resolved and quite satisfactorily to you when Mr. Nussbaum gave his explanation?

Ms. TRIPP. Essentially, it resolved in my mind what the yellow sticky notes had been.

Mr. BEN-VENISTE. Now, Ms. Gorham, in connection with the questioning of you by Mr. Nussbaum on July 27—this was the day after all of this activity on the evening of the 26th—he asked you, and very pointedly, I take it, what exactly did you remember seeing and when did you remember seeing it in the briefcase?

Ms. GORHAM. Yes, sir.

Mr. BEN-VENISTE. Your best memory was that you had seen something yellow and that you couldn't provide any further detail?

Ms. GORHAM. That's correct, in addition to the top of the Goldcraft folder.

Mr. BEN-VENISTE. I understand. Thank you. Let me turn, Ms. Gorham, to the list of files that you maintained for Mr. Foster and, if we could, put Z1109 on our machine.

Now, when you were questioned in deposition about Z1109, it was clear to you in looking closely at that document that that is not a document which you would have created yourself. Is that so?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. Tell us why.

Ms. GORHAM. Certainly the typeface, the font, the style and the names of the subjects are familiar, but on your first entry, where it reads "First Family 1994 income tax," the word "returns," which should be, I believe, a part of that sentence after "tax," has been returned to the left margin.

Mr. BEN-VENISTE. You would not have done that?

Ms. GORHAM. No, sir, I would not have.

Mr. BEN-VENISTE. That's inconsistent with the way you would have created such a document?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. There are other indications on there that led you to conclude that this was not a document that you would have prepared?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. Now, let me ask you to look at document 1123. Looking at document 1123, is that document entirely consistent with the document you would have created for Mr. Foster inventorying the personal files that he had kept in his credenza?

Ms. GORHAM. It is consistent with the typeface and certainly the names of the subjects and the type font that was used, yes.

Mr. BEN-VENISTE. When did you prepare this document?

Ms. GORHAM. This particular document you're showing me? First of all, I could not tell you that I prepared it. It's 2 years later. Also, I would have prepared it upon the initial organization of his files.

Mr. BEN-VENISTE. About when was that?

Ms. GORHAM. The best I can recall, it was early spring, possibly the first 2 weeks of April.

Mr. BEN-VENISTE. Now, this list does not include a Whitewater reference; is that correct?

Ms. GORHAM. I do not see one, sir.

Mr. BEN-VENISTE. It is your testimony, is it not, that you never recalled actually having added Whitewater to this list? Is that so?

Ms. GORHAM. I'm sorry, I do not recall if it was ever added once. I simply do not see it on that list.

Mr. BEN-VENISTE. So you have no recollection that the Whitewater file would have been typed or was typed by you onto this list; is that correct?

Ms. GORHAM. That is correct.

Mr. BEN-VENISTE. Now, do you know whether, on July 22, 1993, when you came into the office and Mr. Nussbaum and Ms. Williams were there, whether you were in the process of revising this inventory?

Ms. GORHAM. Sir, to the best of my recollection, I do not recall that meeting taking place on that Thursday afternoon.

Mr. BEN-VENISTE. I understand. Your recollection is that it was the following week, but we have a lot of indications that maybe you are mistaken in that recollection.

Ms. GORHAM. I do not recall if this particular index was in the midst of being revised, but certainly after Mr. Foster's death on July 20, it was my position to absolutely touch no electronic files, physical files or paper of any such.

Mr. BEN-VENISTE. I understand, but in terms of July 22 itself, it may well have been, if I understand your testimony correctly, that you were in the process of revising this index and that that index would have been with you rather than in Mr. Foster's file?

Ms. GORHAM. No, sir.

Mr. BEN-VENISTE. You don't have that recollection?

Ms. GORHAM. No, sir, I do not have that recollection.

Mr. BEN-VENISTE. You don't know whether it was in the process of revision or not?

Ms. GORHAM. On July 22?

Mr. BEN-VENISTE. Yes.

Ms. GORHAM. No, I do not. I cannot tell you that for sure.

Mr. BEN-VENISTE. If I may touch on two other areas, Mr. Chairman.

The CHAIRMAN. Richard, if you move through them, go ahead.

Mr. BEN-VENISTE. You were asked, Ms. Tripp, about a request for a manual typewriter as opposed to a computer?

Ms. TRIPP. I believe it would have been an electric typewriter, but yes, a typewriter as opposed to a computer.

Mr. BEN-VENISTE. It once again demonstrates my facility with all items electronic in terms of office equipment, but you were asked whether you could unhook an electric typewriter to allow it to be removed to Mr. Nussbaum's office so that Mr. Sloan or others could make use of it?

Ms. TRIPP. Yes, I was asked if that could be done.

Mr. BEN-VENISTE. Now, to demystify all of what was going on, you were asked in your deposition whether it was consistent with

everything that you now know about the finding of the note and the attempt to, in the most discrete way, transcribe what was in the note, either by typing or handwriting it out, that the request for the typewriter that evening could well have been in an effort to transcribe what was written on that note?

Ms. TRIPP. Since Bernie Nussbaum was in that office and he is a man of the utmost integrity, it never really crossed my mind that it could be any wrongdoing at all, so yes, that is certainly consistent.

Mr. BEN-VENISTE. But if there was an effort to transcribe the contents of the note from the note onto some other piece of paper by typing it or eventually handwriting it out when the typewriter was not available, that would have been consistent with everything that was requested of you that evening?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman, Ms. Gorham and Ms. Tripp. We certainly appreciate you being here today and, at the risk of being repetitive, I would like, Ms. Gorham, to review some of the issues related to the index. I'm having some real problems trying to find out what happened to the index, and perhaps you can help us out. As I understand from your deposition, when there were sensitive documents on your computer, such as notes regarding a combination to a safe in Mr. Nussbaum's office, there would be a second layer of protection so that people around the office who did not know the second layer of code words could not access that; is that correct?

Ms. GORHAM. Are you speaking regarding the safe combination, sir?

Senator BOND. Yes.

Ms. GORHAM. That is correct.

Senator BOND. Now, would the index that you prepared and maintained also have had that second layer of protection?

Ms. GORHAM. I don't recall at this time if I placed any protection on any of those documents or not.

Senator BOND. So it is possible, that is, it is not inconsistent with your recollection that someone could have changed that index?

Ms. GORHAM. That is correct.

Senator BOND. I want to clarify the answers you provided just a few moments ago. When asked earlier, you did not recall whether or not you had accessed on your computer the missing index. In other words, you noticed immediately that the hard copy of the index of the files was missing when you went into Mr. Foster's office; is that correct?

Ms. GORHAM. Yes, during that meeting.

Senator BOND. Second, you were asked whether or not you attempted to retrieve that file on your computer, and you do not recall whether you had attempted to open the file?

Ms. GORHAM. That's correct; I do not recall.

Senator BOND. Did I understand you to say, however, that even though you do not recall whether you attempted to retrieve the file,

you would not have made any revisions to that index after you learned of Mr. Foster's tragic death?

Ms. GORHAM. That's correct.

Senator BOND. So you were not the person who changed any of the indices that were found on the computer?

Ms. GORHAM. I would have made no changes.

Senator BOND. You have before you document Z1109. This particular document is actually the sixth page of a stack of documents with a header reading "July 22, 1993." You have told us that this document is not something that you did, the "First Family 1994 income tax," then, on a new line, "returns." You did not do that?

Ms. GORHAM. That is correct. That is not my style of format.

Senator BOND. You were also asked about document number Z1118. That was apparently the first page of another group of redacted files. Now, in this group, the last page is numbered Z1123. Why don't you put that up. You said that Z1123 is at least consistent with the way that you would have kept those files?

Ms. GORHAM. It is consistent with the way that I would have listed the index of the files.

Senator BOND. Now, you were asked whether Whitewater was on that index. Do you recall whether anywhere on that index was something called Whitewater?

Ms. GORHAM. I do not recall if it was on the index that I prepared, and it's certainly not listed on the one that's shown on the screen.

Senator BOND. But you do have a recollection of a folder in Mr. Foster's file that was simply labeled Whitewater; is that correct?

Ms. GORHAM. It is correct.

Senator BOND. Now, when you were having one of those interesting depositions which I'm sure you enjoyed immensely, you were asked about the index. If you would look on page 159 of that June 23 deposition, right at the bottom of the page, you're asked:

Question: As you sit here today, have you ever seen it since? In other words, did you ever find out where it was?

You answered:

Answer: No, I never found out what happened to it.
Question: And you have not laid eyes on it since?
Answer: Not on the paper that should have been there.

That was your answer. Was there any other instance when you saw it? Was there any other occasion when you saw it or any other form that you saw that index in?

Ms. GORHAM. On that particular day, sir, or since?

Senator BOND. Let's start with that particular day.

Ms. GORHAM. No, sir, I did not see it on that day.

Senator BOND. Have you seen it since?

Ms. GORHAM. No, sir, I have not seen that particular index since.

Senator BOND. What have you seen or known about? I'm asking you to tell us just to help us clear the misunderstanding. What are you referring to?

Ms. GORHAM. As displayed on the screen, that particular index is indicative of the styling and the format that I use, and certainly the titles are indicative of some of the folders that were maintained in that particular file drawer.

Senator BOND. So that's essentially what you were referring to. You've not seen what you knew to be your index; however, you are saying that this and only this index seems to be consistent with the index that you have kept; is that correct?

Ms. GORHAM. That is correct.

Senator BOND. Now, we have received a memorandum from the President's Counsel outlining a privilege log for the Foster documents and, without putting them up, I would just go down several of the titles and ask whether you recall having indexed those titles. One is "Whitewater Development." Does that ring a bell?

Ms. GORHAM. No, sir, it does not, only as you mentioned before, the title "Whitewater."

Senator BOND. "WJC continuing legal education"?

Ms. GORHAM. That is a possibility. It sounds familiar.

Senator BOND. "HRC Arkansas law license"?

Ms. GORHAM. That title sounds familiar.

Senator BOND. Skipping down to files that have been labeled as privileged, one of them is "Clinton financial statements." Does that sound——

Ms. GORHAM. I can't tell you if that does sound familiar or not.

Senator BOND. How about "1992 income tax returns"? Would that have been on your index, do you recall?

Ms. GORHAM. That is a possibility.

Senator BOND. There's another one, "First Family, 1993 income tax returns"?

Ms. GORHAM. That is also a possibility that might have been on an index.

Senator BOND. First Family income tax might have been on an index. All right. You did not tell Mr. Nussbaum or Ms. Williams that the index was missing?

Ms. GORHAM. No, sir.

Senator BOND. Did you inquire of anyone where it had gone?

Ms. GORHAM. No, sir.

Senator BOND. You did not at the time print out another copy of that index?

Ms. GORHAM. Not that I recall.

Senator BOND. Thank you, Ms. Gorham.

Ms. GORHAM. You're welcome.

Mr. CHERTOFF. In the remaining minute, I just want to be sure, if we could put up document 1123 again, what we just had up there.

Ms. Gorham, Senator Bond had read to you from another list of the titles of folders Whitewater company 1992 taxes, and I believe you said you recalled 1992 Clinton taxes as having been one of the file folders in the drawer in Mr. Foster's office?

Ms. GORHAM. No, sir, I don't know if I said that I recalled that. It certainly is a possibility that it could have been in the drawer.

Mr. CHERTOFF. You don't see either Whitewater or 1992 taxes on document 1123, the page in front of you?

Ms. GORHAM. No, sir, I do not.

Mr. CHERTOFF. So if this format indicates to you that this is an index prepared in the manner that you would prepare an index, would you agree with me that it appears to omit files that you have a sense were in Mr. Foster's office?

Ms. GORHAM. If, indeed, there are other indices that state these particular files. Of course, I don't have those in front of me, and it would only be by recollection if they were on an indices, and I simply don't recall if they were or were not.

Mr. CHERTOFF. You remember the Whitewater file was one of the files that was originally in the office when you came in to start organizing Mr. Foster's office in the spring; right?

Ms. GORHAM. I do.

Mr. CHERTOFF. When you began that organization process, one of the first things you did was prepare an index of all the files in the drawer involving the personal documents; right?

Ms. GORHAM. That's correct.

Mr. CHERTOFF. You would have had no reason to skip over or omit a listing of the Whitewater file; correct?

Ms. GORHAM. I believe I would have had no reason to do that unless the file were not there when, after writing a handwritten note, a handwritten list, I would have gone back there and would have placed a typewritten list into that folder.

Mr. CHERTOFF. So when you prepared your list, your index, you prepared a complete index of what was originally in the drawer?

Ms. GORHAM. I don't recall what period of time or span existed between the time that I initially wrote the list and/or the method I went about to check or recheck what I had already made a handwritten list of to the point of actually typing the list.

Mr. CHERTOFF. At the point you typed the list, I take it you typed a list of everything that was in the drawer?

Ms. GORHAM. It would seem so.

Mr. CHERTOFF. You had no reason to do otherwise?

Ms. GORHAM. No, sir, I would not have.

Mr. CHERTOFF. You would agree with me that Whitewater and 1992 income tax returns do not appear on document 1123?

Ms. GORHAM. They do not appear there.

Mr. CHERTOFF. You were at ease, we have an indication, as Senator Bond indicated earlier, from the front of the document, page 1118, that this was a document prepared on July 22, 1993?

Ms. GORHAM. Yes, I see the date there.

Mr. CHERTOFF. Am I correct that, in your computer system, if you make an alteration to a document, save a document, perform any work with a preexisting document or print the document out, the date of the header will be the date on which the work was performed?

Ms. GORHAM. I believe on the White House system, that date would have had to have been manually entered.

Mr. CHERTOFF. Someone would have to manually enter July 22, 1993 on page 1118 in order to date this document July 22, 1993?

Ms. GORHAM. That is correct.

Mr. CHERTOFF. That was not you; right?

Ms. GORHAM. That is correct.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Let me turn to Mr. Ben-Veniste for a few minutes.

Mr. BEN-VENISTE. Let me follow up on this. If I understand your testimony, you have no specific recollection of ever creating an index that specifically mentioned Whitewater. Is that so?

Ms. GORHAM. I don't recall.

Mr. BEN-VENISTE. In terms of your practice, we asked you at page 55 of your deposition of yesterday:

Question: OK. Now, do you remember specifically whether there was any occasion when you updated this list or schedule from Mr. Foster?

You asked in response to the question:

As an addition of a file?
Yes.
Answer: I don't remember a specific event.

So it is your testimony that at some point early on you created a list and you don't recall whether you actually updated it?

Ms. GORHAM. I don't recall any specific folders or files I added to the drawer or list.

Mr. BEN-VENISTE. Is it possible that the material called Whitewater, if it was in the file at the time that you first created this list, could have been included in some other category?

Ms. GORHAM. It could have been a possibility, but it's not reflected on this list that you provided me.

Mr. BEN-VENISTE. So, in other words, if it had been included in some other tax information or some other file, that is a possibility to explain its absence from this list?

Ms. GORHAM. It is a possibility.

Mr. BEN-VENISTE. In looking at this list, do you have a sense, if you're looking at document 1123, which is the list, it is consistent in all respects with the way you would have maintained the list?

Ms. GORHAM. That is correct.

Mr. BEN-VENISTE. Do you have in mind that this list is shorter than the list you thought you had created?

Ms. GORHAM. No, sir, I cannot recall today if it was shorter or longer.

Mr. BEN-VENISTE. OK. You were asked about a telephone call from Susan Thomases, Ms. Tripp, to Mr. Nussbaum. Did you know Ms. Thomases in July 1993? Had you met her?

Ms. TRIPP. On several occasions, sir.

Mr. BEN-VENISTE. She was a frequent visitor to the White House?

Ms. TRIPP. I would say so, yes, sir.

Mr. BEN-VENISTE. On the occasions when you met her, were those all at the White House?

Ms. TRIPP. Yes, in and around the White House; yes, sir.

Mr. BEN-VENISTE. In terms of conversation with Mr. Nussbaum, did she phone from time to time?

Ms. TRIPP. Yes, she did.

Mr. BEN-VENISTE. Did she speak to anyone else in the Counsel's Office?

Ms. TRIPP. I can't speak to with whom she spoke. She spoke to me often in terms of trying to reach Bernie. She was a presence we felt, yes.

Mr. BEN-VENISTE. In terms of the occasions when Mr. Nussbaum was not available, did she chat with you from time to time?

Ms. TRIPP. Frequently.

Mr. BEN-VENISTE. Senator Dodd.

Senator DODD. Thank you. Let me thank both of you, first of all, for being here and helping out with this. This isn't easy, obviously, going back; I'm impressed with your efficiency, and yet going back 2 years is not easy. I've made the same observation with other witnesses that have been before the panel, and I'm personally grateful for your efforts.

I'm going to point out that it seems to me, as someone who is listening to this here, when one reads E-mails and so forth—obviously, neither of you ever imagined, I presume, when you were sending those E-mails, that you would be sitting here talking about it in a Congressional hearing; am I correct on that assumption?

Ms. GORHAM. That is correct.

Ms. TRIPP. I think I was always aware that they never went entirely away at the White House.

Senator DODD. That's probably a good piece of advice for those who may be listening in here. Obviously, when you were drafting these things, you were not writing them for posterity. May I assume that was the case?

Ms. TRIPP. They weren't intended to be shared; that's true.

Senator DODD. The point being that, obviously, the words we choose in communications between two people who knew each other pretty well, shared an office and talked to each other, words which we saw in the first E-mail, quoting it here, "everything from his briefcase is missing," when one sees that, if you didn't know anything else, the word "missing" conjures up removed, stolen and so forth. Yet, at least as I've listened to you here and heard your responses to questions, obviously what we're talking about here, in fact, is that there was nothing left in the briefcase. Things had been emptied out. The whole thing appeared to be empty as a result of Mr. Nussbaum's and Mr. Neuwirth's efforts. So the word "missing" in that context has an entirely different meaning if you take it with all the evidence that's been offered.

I'd make the same observation with the word "shredded." Again, in Washington parlance, when one uses the word shredded, one conjures up a whole set of images. We've seen in other investigations in years past support staff involved in shredding of documents, so one immediately draws some conclusions. Yet what we're really talking about here, as I understood your responses, is tearing up some documents rather than putting them in a machine. Is that correct, Ms. Gorham?

Ms. GORHAM. That is correct.

Senator DODD. My point being that if you just read that and nothing else, you can see how Washington has a Pavlovian response to some words because of our past experience. You're familiar with what I'm talking about?

Ms. GORHAM. I am.

Senator DODD. In effect, if you had to rewrite these E-mails, you might use different words than "shredded" or "missing," I would presume?

Ms. GORHAM. I would have used torn in half.

Senator DODD. You would have replaced the word "missing," I presume, as well, I mean, in the conversation in terms of what came out of the briefcase? Am I correct as well in that, Ms. Tripp?

Ms. TRIPP. I didn't write——

Senator DODD. I'm sorry, Ms. Gorham?

Ms. GORHAM. That is correct, considering that I had seen the color of yellow and the top of a gold folder.

Senator DODD. I appreciate that very much. I've raised these questions with others who were involved as members of the White House staff, and I'm going to raise them with you as well because I think it's important that we have as much of this information on the record as possible. I ask both of you here, and if you both would respond to these, whether or not anyone on or after Vince Foster's death on July 20, 1993, whether anyone instructed you, either one of you, to destroy any documents from Vince Foster's office?

Ms. GORHAM. No, sir.

Senator DODD. Ms. Tripp?

Ms. TRIPP. No, sir.

Senator DODD. Did either one of you destroy any documents?

Ms. GORHAM. I did not.

Ms. TRIPP. No, sir.

Senator DODD. On or after July 20, did anyone ask you or instruct you to conceal from any law enforcement officials any documents from Vince Foster's office?

Ms. GORHAM. No, sir.

Senator DODD. Ms. Tripp?

Ms. TRIPP. No, sir.

Senator DODD. Did anyone at any time ask or instruct either one of you to impede, obstruct or interfere with the law enforcement officials performing their duties?

Ms. GORHAM. No, sir.

Ms. TRIPP. No, sir.

Senator DODD. I thank you both very much. I appreciate you being here.

Ms. GORHAM. You're welcome.

Ms. TRIPP. You're welcome.

Senator DODD. If you have any additional questions, Mr. Chairman.

Senator SARBANES. Ms. Gorham, I just want to be clear on one thing. I take it from what you said earlier that you put all written or printed matter into your burn bag when you disposed of it, not into a trash bag; is that correct?

Ms. GORHAM. That's correct.

Senator SARBANES. That's your practice?

Ms. GORHAM. It was.

Senator SARBANES. But that is apparently not necessarily the standard practice, or others do it differently, I take it?

Ms. GORHAM. I'm sorry. I don't know how others discarded of their paper.

Senator SARBANES. How many burn bags were there in the White House Counsel's Office?

Ms. GORHAM. I don't recall the exact number. There is one in Mr. Foster's office, and I maintained one. I do not recall if Ms. Tripp,

Ms. Pond or Mr. Castleton had one. They certainly might have. I don't recall if Mr. Nussbaum had one in his office.

Senator SARBANES. What's your recollection on burn bags, Ms. Tripp, in the White House Counsel's Office?

Ms. TRIPP. I had one. I was aware that Deborah had one in her area. There may or may not have been one in the area of Tom Castleton's desk. At one point during my time in the Counsel's Office, it was my understanding that Bernie had one.

Senator SARBANES. Did Vince Foster have one?

Ms. TRIPP. I was unaware that he did. He used mine frequently.

Senator SARBANES. He used your burn bag?

Ms. TRIPP. Yes, he did.

Senator SARBANES. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Frankly, many of the questions that I was going to ask this morning have either been asked by counsel or Senator Bond; but there are a couple of things I just want to pursue because they were left dangling, as far as I'm concerned. It's the issue, Ms. Gorham, of the Goldcraft folder. I mean, everybody is focused in on the little yellow pieces of paper; but as I understand it now, you saw the Goldcraft folder in the briefcase on July 22, 1993; is that right?

Ms. GORHAM. I saw the top of the Goldcraft folder——

Senator MACK. What is—go ahead.

Ms. GORHAM. —on the Monday following Mr. Foster's death, which would have been, I believe, July 26, 1993.

Senator MACK. Hold it just a second. Are you saying that you didn't see this on July 22?

Ms. GORHAM. On the 22nd of July?

Senator MACK. That's correct.

Ms. GORHAM. No, I do not recall seeing it.

Senator MACK. All right. I will move away from that question, then, because I thought you had said on July 22.

I'd like to focus, then, on the—again, to use your term—the Nussbaum interrogation. Had he ever questioned you like that before?

Ms. GORHAM. No, sir.

Senator MACK. You had indicated that your recollection of the event is vivid. I'm assuming that's because it was somewhat unpleasant?

Ms. GORHAM. It was simply a matter of asking me repeated questions. If Mr. Nussbaum asked me six times, he asked me a dozen times the same repeated questions.

Senator MACK. Just over and over and over again?

Ms. GORHAM. That's correct.

Senator MACK. What's a little bit? I'm trying to figure out why he would do that. I mean, after all, at that point I think he already knew that, in fact, there were yellow pieces of paper in the briefcase. What could he possibly have been driving at if he already knew the same thing you knew? Why would he keep asking you these questions over and over again?

Ms. GORHAM. Sir, I did not know that there were yellow pieces of paper in the briefcase at the time of that conversation. My only assumption was that he was simply asking me as much as I knew about what might have been in the briefcase of Mr. Foster or what I had seen in the briefcase.

Senator MACK. Again, you told him?

Ms. GORHAM. I simply saw out of the corner of my eye the color of yellow and the top of a Goldcraft folder.

Senator MACK. Was he specific in the pursuit of the yellow versus the folder?

Ms. GORHAM. No, sir. I think he was more specific in the yellow, could it have been a legal pad, could it have been a sheet of paper, what type of form that it took.

Senator MACK. He showed no interest, then, in the folder?

Ms. GORHAM. I don't recall if he did or did not.

Senator MACK. Do you have any idea what may have happened to that folder?

Ms. GORHAM. No, sir, I don't.

Senator MACK. It's interesting that everybody has focused in on the yellow, but nobody has focused in on what happened to that folder. You have no idea what might have been in the folder?

Ms. GORHAM. No, sir, I don't.

Senator MACK. OK. Ms. Tripp, this is moving into a different area, but in your deposition you stated that Maggie Williams was milling around the office in the days following Mr. Foster's death and that she had "input" with regard to, again, "how the review of documents in Mr. Foster's office should proceed." Can you elaborate on that?

Senator SARBANES. Could you give us a page, Connie?

Ms. TRIPP. If we could have the page, maybe that would help.

Senator MACK. I think it's pages 82 and 83. Yes, pages 82 and 83.

Mr. BEHRE. Of which day, Senator?

Senator MACK. Just one minute. July 12th.

Ms. TRIPP. Senator, could you repeat your question, please?

Senator MACK. Yes, sure. I indicated—and I think you do have the deposition now in front of you——

Ms. TRIPP. I think so.

Senator MACK. —that, according to that deposition, you have said that Ms. Williams had input with regard to how the review of documents in Mr. Foster's office should proceed. Can you tell us about that?

Ms. TRIPP. Right. I believe I said in the deposition—it reads, I believe, "Maggie provided input."

Senator MACK. Why do you think that?

Ms. TRIPP. I went on to say that I didn't know what that input was. I recall Maggie being there, conversations. I have no clear recollection as to what her position was.

Senator MACK. I'm not asking you about what her position might have been, but you have indicated that Maggie Williams had input——

Ms. TRIPP. I said I believed she had.

Senator MACK. —about the review of the documents. I'm curious as to why you drew that conclusion, and I think you went on fur-

ther to say—I don't have it here in front of me—but that there were others—here it is. "It was my impression that it was Bernie, Steve Neuwirth, Cliff Sloan, Maggie Williams." You've indicated a series of people who you believe had input. Now, why did you draw that conclusion?

Ms. TRIPP. I remember conversations, the substance of which I cannot recall at this point, however, on that topic.

Senator MACK. Say that to me again, I'm sorry.

Ms. TRIPP. Let's go back to the first portion where I say I believe Maggie provided input. I believe she, among others, was involved in conversations concerning the review of documents. I don't recall the substance of those conversations.

Senator MACK. Now, I can understand that. But, again, I'm assuming given your location you overheard conversations among these folks that would lead you to believe that, in fact, Maggie Williams had input with respect to the review of the documents?

Ms. TRIPP. Yes, but I'm unsure, Senator, whether it was something I overheard, if it was in a conversation right in front of my desk. I'm just uncertain. We were in very close quarters. I believe that those individuals whom I've named in the deposition were, in some fashion or another, involved in that discussion.

Senator MACK. Do you have any recollection as to why you think, let's say, Mr. Sloan or Mr. Neuwirth maybe had input?

Ms. TRIPP. As I said, I recall conversations involving these individuals.

Senator MACK. Very good. I don't have any further questions. I yield my time to Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. OK. Should I just go until the end? I'll turn both of these around. Thank you very much. Again, thanks to the witnesses for being here. There's only about a minute left, but let me start anyway in a line of questioning.

I think what we're looking at is that these E-mails were about a week after the death of Mr. Foster, but the E-mails really dealt with things that had happened over the past 6 or 7 days; is that correct? It wasn't just what was going on that morning, am I right?

I'm trying to piece this together myself. I mean, when you were talking about the E-mails, you were saying something about last Wednesday, so even though they were being written on the 27th, they were putting together events that had happened over the last 6, 7 days; is that correct?

Ms. GORHAM. I would say so.

Senator GRAMS. Ms. Tripp?

Ms. TRIPP. I think they reference, for the most part, events on the 26th and reflect back on the earlier week, yes.

Senator GRAMS. Ms. Tripp, you stated that when you learned about the note, you remembered that Ms. Gorham told you about finding little yellow sticky notes at the bottom of Mr. Foster's briefcase. Is that true?

Ms. TRIPP. Deborah never said she found yellow sticky notes.

Senator GRAMS. She saw them?

Ms. TRIPP. She never said she saw them. My recollection is, when I asked her, she stated there's nothing in there but a bunch

of yellow sticky notes or it is empty. I don't know whether she was told that or whether it was something she saw.

Senator GRAMS. Ms. Gorham, do you recall that?

Ms. GORHAM. The conversation? No, I'm sorry, I do not.

Senator GRAMS. You said before you didn't.

What day did Ms. Gorham tell you this information? I want to establish this because I think Mr. Mack was asking about this at first. Was it on July 22nd when she and Mr. Nussbaum and Ms. Williams conducted this so-called second search of Mr. Foster's office after the investigators left? Was your recollection of that conversation back to Thursday of the week before, that was July 22nd?

Ms. TRIPP. Sir, I can only state unequivocally that it was prior to our departure for Little Rock and the funeral.

Senator GRAMS. OK. You departed for Little Rock on July 25, 1993?

Ms. TRIPP. I'm uncertain of the date.

Senator GRAMS. It was, though, the previous week that these E-mails were being discussed?

Ms. TRIPP. It was either the day following his death or the day following that, I believe.

Senator GRAMS. OK. So, in other words, there was a mention of some yellow sticky notes at the bottom of the briefcase either on July 21st or the 22nd, is that what you are saying? You are saying it was the day after?

Ms. TRIPP. Sir, I have historically been terrible on dates. If you could, is that Wednesday and Thursday that we're referring to?

The CHAIRMAN. I'm going to take this opportunity to turn it back over and we'll come back to Senator Grams. But, just in listening to you and Senator Grams, you recall this conversation taking place prior to you going down to the funeral. The funeral took place on the Friday, so, therefore, it would have been prior to that Friday, it would have been, then, either the 21st or the 22nd. The 23rd was the date you went down.

Ms. TRIPP. Yes, sir, that's right.

The CHAIRMAN. Senator Sarbanes. We'll resume the questioning with you, Senator.

Senator SARBANES. Ms. Tripp, I want to be very clear on this because you said you're not good on the dates, but you are good on the sequence. Your sequence is that Foster died on Tuesday and on Friday you went to the funeral in Little Rock. Either Wednesday or Thursday is when you're placing this particular conversation; is that correct?

Ms. TRIPP. Yes, sir. I didn't mean I'm bad on days; I am on dates.

Senator SARBANES. Right, that's why I put it in days rather than dates.

Ms. TRIPP. Yes, sir.

Senator SARBANES. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes. I apologize to the witnesses. I've been in and out to other meetings. In response to a question of Senator Dodd, both of you indicated that you had not destroyed any documents. Do you know of anyone who destroyed any documents?

Ms. GORHAM. No, I do not.

Ms. TRIPP. I do not, Senator.

Senator SIMON. On the day after, on Wednesday, what was the mood in the office there?

Ms. GORHAM. The mood in the anteroom where the secretaries were sitting?

Senator SIMON. In the Counsel's Office—in that general suite and where you were.

Ms. GORHAM. I think Ms. Tripp, Ms. Pond and Tom Castleton probably had the same mood that I did in that I was in shock and I was extremely quiet.

Senator SIMON. Ms. Tripp?

Ms. TRIPP. The mood in the Counsel's Office was funereal. I believe all of us were in a total state of disbelief.

Senator SIMON. At some point during the day, the President stopped by; is that correct, or is that not?

Ms. TRIPP. He did late in the morning.

Senator SIMON. What did he have to say?

Ms. TRIPP. It was a kind gesture on his part. Bernie, I think, had been down speaking to President Clinton and came up and mentioned that the President would likely be coming by, and he did. He came and I think just made his presence known, his warmth. There was no substantive chatter about the tragedy. There was more a sense of extending a hand.

Senator SIMON. To encourage people who were just overwhelmed by the shock and grief of it all; is that correct?

Ms. TRIPP. Yes, sir.

Senator SIMON. In this period when you and Mr. Nussbaum and others there were in this stunned kind of disbelief, is it somewhat understandable that maybe some people made some mistakes as they moved ahead and made judgments on things? It's a softball question, but I think it's a very important one.

Ms. TRIPP. Sir, are you directing that to me or——

Senator SIMON. To both of you.

Ms. TRIPP. It is my opinion that we were all operating on an autopilot mode that perhaps is not representative of any of us at our best.

Senator SIMON. Ms. Gorham?

Ms. GORHAM. I'm sorry, sir, when you refer to mistakes, I really cannot think of, so to speak, any mistakes that were taken upon. Virtually at the time of Mr. Foster's death, my job, my duties expired. I simply worked at that time for Mr. Nussbaum, and for his assistants also.

Senator SIMON. I have no further questions. I yield my time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Simon.

Let me follow up on this in terms of the interview that was upcoming by the police. At the time that you are operating on autopilot as you say, Ms. Tripp, and under such emotional strain as you have described, did you learn that the police wished to interview you?

Ms. TRIPP. I did learn that at some point.

Mr. BEN-VENISTE. Ms. Gorham, I take it you also learned that the police were interested in interviewing the people in the Counsel's Office?

Ms. GORHAM. I did.

Mr. BEN-VENISTE. Now, did there come a time when Mr. Nussbaum or others provided some guidance in terms of the upcoming interviews?

Ms. GORHAM. There was.

Mr. BEN-VENISTE. Ms. Tripp?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. You recall that as well. Had you ever been interviewed by the police, Ms. Gorham, prior to that time?

Ms. GORHAM. No, by no jurisdiction.

Mr. BEN-VENISTE. Ms. Tripp, had you ever been interviewed by the police?

Ms. TRIPP. No, sir.

Mr. BEN-VENISTE. All right. To the best of your recollection, was it Mr. Nussbaum who gave you these guidelines or pointers?

Ms. TRIPP. It's my recollection that it was Mr. Nussbaum in the presence of others, yes.

Mr. BEN-VENISTE. What do you recall having been said?

Ms. TRIPP. I recall being called into a meeting at which time Bernie gave rather specific guidance, and that was to be truthful, forthright in response to questions posed by any of the investigative services that would possibly be coming to see us, to answer the questions as asked and to not embellish or speculate.

Mr. BEN-VENISTE. Like your own attorneys would have given you advice in coming here today, I take it?

Ms. TRIPP. Yes, sir.

Mr. BEN-VENISTE. With respect to what Mr. Nussbaum told you or what anyone else may have mentioned to you in connection with being interviewed by the police, did anyone suggest to you that you ought to withhold any information?

Ms. TRIPP. No, sir, that was never suggested to me.

Mr. BEN-VENISTE. Ms. Gorham?

Ms. GORHAM. No, sir.

Mr. BEN-VENISTE. Did anyone suggest there were certain areas that you should not get into or you should not respond to?

Ms. TRIPP. No, sir. Only that we should not speculate.

Mr. BEN-VENISTE. Ms. Gorham?

Ms. GORHAM. I'm sorry, I don't recall.

Mr. BEN-VENISTE. So, if I understand it, the advice was to be truthful in your responses and to cooperate to the best of your ability with the investigators?

Ms. TRIPP. Yes, sir, that's accurate.

Mr. BEN-VENISTE. Ms. Gorham?

Ms. GORHAM. Yes. I was told by Mr. Neuwirth to tell the truth.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman.

Just going back quickly, we did establish, Ms. Tripp, that you believed that you had this conversation or knowledge of these little yellow pieces of paper in the briefcase on the 21st or 22nd, but at least before you left for Arkansas. So that was in your memory?

Ms. TRIPP. That is clearly in my memory.

Senator GRAMS. Ms. Gorham, you've never mentioned in your deposition before this Committee that you found these little yellow sticky notes. Why had you never mentioned those?

Ms. GORHAM. I never found any yellow sticky notes.

Senator GRAMS. Had you seen these notes or little pieces of paper?

Ms. GORHAM. In the bottom of his briefcase, no.

Senator GRAMS. Ms. Gorham, Ms. Tripp said in her deposition that she asked you if you looked everywhere for a note to which you said yes. Then, according to her deposition, she said, "I said, did you look in the briefcase because I knew he," meaning Mr. Foster, "had not left with a briefcase the day before. And she said it's empty except for a bunch of little yellow sticky notes." Does that help refresh your recollection at all?

Ms. GORHAM. No, sir.

Senator GRAMS. Later on, on the 26th, you remembered seeing these or were asked about them. Do you recollect ever seeing anything that looked like a yellow piece of paper in the bottom of the briefcase?

Ms. GORHAM. No, sir. I only recall the color yellow.

Senator GRAMS. So you don't recall whether there were torn-up pieces of paper like this that might have been strewn on the bottom, or possibly if it was a little yellow sticky note it would have been probably more uniform in shape and rectangular, but you have no recollection if there were just pieces of paper or if there were actually neat little sticky notes?

Ms. GORHAM. No, sir, only out of the corner of my eye did I see the color yellow.

Senator GRAMS. OK. Let me just go on here quickly.

Ms. Tripp, are you sure that Ms. Gorham said this to you? According to your testimony she said, "I am definite at this point because I thought to myself how awful that they did not pursue those yellow sticky notes sooner." So, on the 26th, you are recollecting back to the week before in that you were cognizant of the yellow paper in there and you thought it was funny they didn't pursue it then?

Ms. TRIPP. Yes, sir, I thought the little yellow sticky notes ultimately turned out to be a torn-up yellow note.

Senator GRAMS. Ms. Tripp, don't you think Mr. Nussbaum or someone else in the White House Counsel's Office should have seen the scraps of paper in the briefcase earlier? You said in your deposition, "I don't know that I actually had the nerve to say at that point to Bernie if you had just looked, you would have seen they weren't yellow sticky notes, but that was in my thought." Shouldn't they have found the notes before the 26th?

Ms. TRIPP. I have no real proof that the yellow sticky notes were, in fact, the yellow——

Senator GRAMS. But you recollect the conversation that said there was something in the briefcase that was looking like yellow sticky notes?

Ms. TRIPP. Oh, yes, sir, uh-huh.

Senator GRAMS. Don't you find it odd, if he had learned that there were yellow sticky notes in the briefcase on the 22nd, that

he didn't check the briefcase again? Do you think that's odd when Mr. Sloan, in fact, told him on the 22nd that there were pieces of paper in the bottom?

Ms. TRIPP. Sir, I was never aware of what Mr. Sloan did or did not say to Bernie about the contents of the briefcase until I read it recently in the press. So I was unaware of what Bernie knew and when he knew it.

Senator GRAMS. Ms. Gorham, weren't you surprised that the torn-up note was found in the briefcase? Were you surprised at that? I ask because if you had normally torn something up, you would have put it in a burn bag and not in the briefcase. I think I'm going to go back to the E-mail that says something about—but were you surprised that it was found in the briefcase and not in the burn bag?

Ms. GORHAM. Sir, I do not recall if I have read that the torn-up note was placed at the bottom of his briefcase. It was much later into that fall that I even knew what the statement or writings were on this piece of paper that was supposedly torn up.

Senator GRAMS. I want to get through this before my time runs out here. Ms. Gorham, you also said that you saw something yellow on top of the gold folder; is that correct? Do you remember just saying that a few moments ago here in the testimony?

Ms. GORHAM. No, I said I saw the top cut of a folder.

Senator GRAMS. I thought you said you saw something yellow on top of the folder. So, in other words, I was trying to figure out how the folder was positioned in the briefcase. When do you recollect seeing that, was it standing up so something yellow would have been leaned against it or was it on the bottom of the briefcase or how do you recollect—when did you look into the briefcase, or see this? Is this on the 26th?

Ms. GORHAM. I did not look into the briefcase. On the 26th, I picked up Mr. Foster's satchel at which time I moved it from the corner of his desk to the front of his bar. As I've stated in my testimony, I saw the top of the cut of a third-cut folder and the color of yellow.

Senator GRAMS. So this was on the 26th. When you say "the satchel," do you mean the briefcase?

Ms. GORHAM. I do.

Senator GRAMS. Let me move on. Also, in the E-mail—I'm going to be reading off this—this is on 1207 of the E-mail, you said this was from Ms. Tripp to you, Ms. Gorham. It said, "Everything from his briefcase is missing. The little yellow stickies or was there more?" Ms. Gorham, was there more? Again, just the top of the gold file is the only other thing you recollect seeing in the briefcase?

Ms. GORHAM. I'm sorry, your question, was there more in the briefcase?

Senator GRAMS. Right, I mean, that's all you recollect?

Ms. GORHAM. That is correct.

Senator GRAMS. Now, going to 1209, I wanted to read just from the bottom of that E-mail where it says "I can't imagine that anyone as meticulous as this individual was"—and, Ms. Tripp, this is your writing?

Ms. TRIPP. It is.

Senator GRAMS. You were referring then to Vince Foster as "this meticulous individual"?

Ms. TRIPP. Yes, sir.

Senator GRAMS. That assumes that it was normal that he would take his briefcase with him when he left for the day. So we're assuming, then, that he was planning to return. Did you assume that when he left that day, Ms. Tripp?

Ms. TRIPP. Earlier on the day of his death?

Senator GRAMS. Yes.

Ms. TRIPP. I made a specific note of that because Deborah had left the office for a period and had not indicated to us what his plans were, except to say that she didn't expect him to leave the office. So I wanted to be able to keep her informed when she came back, so I made a note of how he exited the office.

Senator GRAMS. Ms. Gorham, you were not there when Vince Foster left that day?

Ms. GORHAM. That is correct.

Senator GRAMS. Ms. Tripp, what did he say as he exited the office that day?

Ms. TRIPP. He said I'll be back.

Senator GRAMS. What frame of mind or what kind of mood would you think that he was in?

Ms. TRIPP. He simply said I'll be back. He——

Senator GRAMS. He didn't seem angry or depressed, just a normal exit, saying I'll be back?

Ms. TRIPP. Mr. Foster was always gracious.

Senator GRAMS. On 1212, again, the E-mail, you said something to the effect of, "But why would the burn bag not have been sifted through immediately, not days later? And of course, it would be secured along with all else and not left hanging around in an unsecured area."

Ms. TRIPP. Right.

Senator GRAMS. What did you think was an unsecured area at this time?

Ms. TRIPP. Upon reflection, I believe I was referring to Vince Foster's unsecured, at the time, office without a lock and a key on that specific door.

Senator GRAMS. Ms. Gorham, you said that it was normal practice for you that if you tore up anything or any handwritten material was torn up it was put into the burn bag, and I think you assumed in a writing on the E-mail, on number 1213 to Ms. Tripp where you said, "I told Bernie that VWF had placed shredded remnants of personal documents in the bag." Now, that was the burn bag; correct, not his briefcase or the satchel?

Ms. GORHAM. That's what I'm assuming, sir.

Senator GRAMS. "On Thursday, I told Bernie in front of everybody that shredded remnants were in the bag." Again, you told him that there were some torn-up pieces of paper in the burn bag. Did you see these in the burn bag yourself?

Ms. GORHAM. I don't recall that today, but perhaps since that day he was working on mostly personal matters. It is a possibility I might have walked in there and seen him tear up something that I would have considered a personal piece of paper or document of some type and put it in his burn bag, but I do not recall today.

Senator GRAMS. Were you surprised when the note was found or torn-up pieces were found in his briefcase and not the burn bag?

Ms. GORHAM. Sir, I was not surprised because I came to no opinion or conclusion about the contents of it for many months.

Senator GRAMS. OK. One other thing is that this was torn in many pieces, many, 27 different pieces were found and you said normally the practice was just to tear them in half and put them in the burn bag?

Ms. GORHAM. One significant point about Mr. Foster is he was a pitch-and-toss kind of gentleman. I could not tell you, though, how he tore up—if he did—documents in his burn bag, since I was not there in his office most of the time when he was present, whether he tore them in half or quarters or simply placed them as a whole sheet into his bag.

Senator GRAMS. But you are sure that he had a burn bag in his office? I think there was some question earlier by some other witnesses whether there was a burn bag in his office, but you feel there was that day?

Ms. GORHAM. Yes, sir. Excuse me, what was the end of your question?

Senator GRAMS. That there was a burn bag in his office on that day?

Ms. GORHAM. On the day of his death?

Senator GRAMS. Yes.

Ms. GORHAM. I cannot tell you today if I recall that there was a burn bag in the office on that day, but it was his general practice to have one in his office.

Senator GRAMS. One final question, quickly, on this list of—this is 1109 about the file that was kept, or at least the index to the file that you had written. It was dated at the beginning July 22, 1993. You said you don't recall making any additions or changes to that file or that index?

Ms. GORHAM. Not after Mr. Foster's death.

Senator GRAMS. If you didn't update the list, someone else might have, or did anybody else have access to your computer, to this list?

Ms. GORHAM. It's a possibility. My general password was known and I do not recall if it was even necessary to have placed a password simply on the listing of files that were kept in Mr. Foster's office.

Senator GRAMS. So it could have been easy for someone in that office to access it and to revise it if you didn't do it?

Ms. GORHAM. It's a possibility, because my password was known simply because it was my husband's name.

Senator GRAMS. OK. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. There's a tendency very much after the fact to be very clinical about this matter and to look at people's conduct not in the context of the emotional situation at the time. We've had some testimony that that was an extremely stressful and traumatic period in the White House and particularly in the White House Counsel's Office. You were there. You may, in fact, yourself, I have the sense, have experienced that stress and trauma. But is that an accurate characterization of the state of affairs, Ms. Tripp?

Ms. TRIPP. I cannot overstate how traumatic this series of hours and days following his death were for all of us.

Senator SARBANES. Ms. Gorham?

Ms. GORHAM. I'm sure that it created a great deal of stress for other individuals. I cannot speak for them. It was a day or days for me that I was, I would say, introverted and extremely quiet and shocked.

Senator SARBANES. Was Mr. Nussbaum visibly upset? We've received testimony that he was at one point pacing up and down, at other points seemed to be exhausted, was both very much into things trying to move it along and at the same time very emotionally distraught. What was your perception of his condition?

Ms. Tripp, you worked for him, I take it?

Ms. TRIPP. Yes, sir.

Senator SARBANES. You might be in a position to comment about that.

Ms. TRIPP. He was undoubtedly emotionally distraught.

Senator SARBANES. Would you say that a lot of what in retrospect people can criticize has to be viewed in terms of the kind of emotional trauma people were going through at the time?

Ms. TRIPP. I didn't understand the first part of your question.

Senator SARBANES. It's easy afterwards to say you should have done it this way or you should have done it that way or why didn't you think of this, why didn't you think of that. But if someone was to put that even to you, as to your own actions or of the actions of others, you would say we were in a terrible emotional state at the time and you have to recognize that in terms of looking at how we behaved; is that a fair statement?

Ms. TRIPP. Absolutely, yes.

Senator SARBANES. Absolutely.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. I have just a couple of questions about this index, Ms. Gorham. If indeed, as it seems to be reflected electronically, this index was said to be printed out—I'm looking at document 1123—on July 22, 1993——

The CHAIRMAN. Can you put document 1123 up? That's good.

Mr. BEN-VENISTE. Thank you, Mr. Chairman. If, in fact, that was printed out on July 22, 1993, if there was a change or deletion, would that be reflected somewhere in the computer?

Ms. GORHAM. It would be reflected in the computer prior to 7/20/93, but only if there were an addition of a file being placed in the folder that Mr. Foster had requested that I take out.

Mr. BEN-VENISTE. What I'm asking you now is if, in fact, this document was printed out on July 22, 1993, and there were a deletion or addition or some change in it, would the computer reflect that? I mean, would that be a record kept in the computer?

Ms. GORHAM. I would imagine that it would be, but I cannot tell you for sure whether a computer would update that on its directory listing of a document.

Mr. BEN-VENISTE. You've indicated that document 1123 is in all respects consistent with the list that you would have maintained for Mr. Foster; correct?

Ms. GORHAM. That is correct.

Mr. BEN-VENISTE. You don't recall whether you printed out any copy of that list on the 22nd, but that it's possible, because your password was known, that someone else might have accessed it and printed it out?

Ms. GORHAM. I do not recall printing any of Mr. Foster's documents after that date, but there is a possibility that it could have been printed out.

Mr. BEN-VENISTE. There's a possibility that someone would have been able to simply use your console to find the index and to print it out?

Ms. GORHAM. There is a possibility.

Mr. BEN-VENISTE. I have nothing further, thank you.

The CHAIRMAN. Let me just ask you one thing. You said that the typeface and the format of this particular document, 1123, was the one that you had used?

Ms. GORHAM. Yes, sir.

The CHAIRMAN. OK. Now, Mr. Ben-Veniste said that somebody could print it out. Someone could also have deleted materials that you recall but are not certain were indexed. I'm not quite sure about that. I don't want to put in terms of Whitewater or 1992 tax matters. Let me ask you this: Do you recall whether you had ever prepared an index that made reference to Whitewater materials?

Ms. GORHAM. No, sir, I do not recall a reference to Whitewater materials on an index. I only recall the file.

The CHAIRMAN. If you had a file, wouldn't it have been customary to index it?

Ms. GORHAM. Possibly. Normally it would have been, but there might have been a lag by the time that I handwrote the list of documents and folders and by the time that I typed it.

The CHAIRMAN. We've also heard testimony that there was a 1992 tax file. Do you recall whether you had ever indexed that?

Ms. GORHAM. No, sir, I cannot recall today if I did or did not.

The CHAIRMAN. One way or the other?

Ms. GORHAM. No, sir, I cannot.

The CHAIRMAN. I have no further questions.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

I would like to go back to the event regarding Mr. Neuwirth when Mr. Neuwirth was at the White House and had the briefcase and supposedly discovered all at once these little pieces of paper in the briefcase. Were you in the office when Mr. Neuwirth was there, Ms. Gorham?

Ms. GORHAM. I was in the anteroom where the executive assistants sat.

Senator SHELBY. How far is that from the office where Mr. Neuwirth was?

Ms. GORHAM. When he came out of Mr. Foster's office?

Senator SHELBY. Right.

Ms. GORHAM. I would say there's approximately 10 or 12 feet from Mr. Foster's door to my desk.

Senator SHELBY. Do you recall about what day this was on the calendar?

Ms. GORHAM. On Monday the 26th.

Senator SHELBY. On Monday the 26th. This was some 6 days after the death of Mr. Foster?

Ms. GORHAM. Yes.

Senator SHELBY. How long had Mr. Neuwirth been in Mr. Foster's office to your knowledge?

Ms. GORHAM. I don't recall how long he had spent in there intermittently. Of course, as I testified, he left the office once, but I don't recall at what period of time or how long.

Senator SHELBY. Was this morning or afternoon?

Ms. GORHAM. That he walked out with the briefcase?

Senator SHELBY. Yes.

Ms. GORHAM. I don't recall if it was late morning or early afternoon. I only recall the event.

Senator SHELBY. Do you recall when he first went in the office, what was his stated purpose in being in the office?

Ms. GORHAM. He asked me if I would tell him generally what I would find in each drawer or cabinet of Mr. Foster's.

Senator SHELBY. OK. Did you go in the office with him then?

Ms. GORHAM. I stood in the doorway with him.

Senator SHELBY. What did you do, if anything?

Ms. GORHAM. I simply pointed to each cabinet.

Senator SHELBY. Just relate to us here basically, take your time in doing so, as to standing at the door what you pointed at, in your best judgment, for Mr. Neuwirth.

Ms. GORHAM. I believe at this point in time I probably would have pointed out to him the drawers on the left in the cabinet, those four, and what they, that I could recall, contained. I probably pointed out to him what he possibly would find in Mr. Foster's desk, that there was an open bookshelf and what was usually placed on that bookshelf and what he might find in the four-drawer cabinet to the left of Mr. Foster's desk in addition to the overhead cabinetry above his computer.

Senator SHELBY. Was anyone else in the room, the office, other than Mr. Neuwirth and yourself standing at the door, if you were——

Ms. GORHAM. I recall no other individual.

Senator SHELBY. Did you leave the doorway after you instructed him where he might find thus and so?

Ms. GORHAM. I did.

Senator SHELBY. Do you have a judgment as to how long he was in the office looking around, looking for things?

Ms. GORHAM. No, sir, I'm sorry, I do not.

Senator SHELBY. Do you recall when Mr. Neuwirth told you or told anyone that he had found little slips of paper in the briefcase?

Ms. GORHAM. Mr. Neuwirth never stated to me what he had found in Mr. Foster's briefcase.

Senator SHELBY. As you were standing in the door instructing him where so-and-so might be, did you point at the briefcase?

Ms. GORHAM. I do not recall pointing to the briefcase. I believe it would have been obvious by sight.

Senator SHELBY. The briefcase was in the room?

Ms. GORHAM. It was.

Senator SHELBY. Where was it situated in the room?

Ms. GORHAM. I believe it was standing up, propped up against the corner of Mr. Foster's desk.

Senator SHELBY. By "propped up," do you mean part of it was off the floor leaning on the wall?

Ms. GORHAM. Propped up against the edge of his desk.

Senator SHELBY. OK. But it wasn't turned upside down or sideways, was it?

Ms. GORHAM. Not that I recall.

Senator SHELBY. OK. When did you learn from Mr. Neuwirth as to what he claimed he found in the briefcase?

Ms. GORHAM. Mr. Neuwirth never stated to me what he had found in the briefcase.

Senator SHELBY. When did you learn about what he claimed he found in the briefcase from other sources, or any source?

Ms. GORHAM. From another source.

Senator SHELBY. What was that source?

Ms. GORHAM. Betsy Pond, Mr. Nussbaum's Executive Assistant.

Senator SHELBY. When was this?

Ms. GORHAM. The best that I can recall, it was later in that week after——

Senator SHELBY. Was it that same day or later in the week?

Ms. GORHAM. I believe it was later in the week.

Senator SHELBY. You were saying, I believe, earlier, it was July 26, 1993. Didn't you relate that a minute ago?

Ms. GORHAM. Yes, sir.

Senator SHELBY. In your best judgment, "later in the week" was when?

Ms. GORHAM. Sir, it could have been, honestly, Tuesday or Wednesday or Thursday or even as late as Friday.

Senator SHELBY. Was Mr. Neuwirth in and out of Mr. Foster's office searching the office all week long?

Ms. GORHAM. I don't recall how many times he entered or exited that office, sir.

Senator SHELBY. But you do recall him leaving and entering the office on more than one occasion that week, do you not?

Ms. GORHAM. Yes, on Monday, of course.

Senator SHELBY. Did he ever relate to you anything he was looking for or anything that he may have found during this period of time, 2 or 3 days?

Ms. GORHAM. No, sir.

Senator SHELBY. Did you ever ask him?

Ms. GORHAM. No, sir.

Senator SHELBY. Did Mr. Nussbaum, to your knowledge, discuss this with him?

Ms. GORHAM. I would not have been privy to those conversations.

Senator SHELBY. OK. On the occasion when Ms. Pond related to you that Mr. Neuwirth had found some slips of paper in the briefcase, where were you when you heard that?

Ms. GORHAM. I don't believe that she related to me it was found by Mr. Neuwirth or that there were slips of paper.

Senator SHELBY. What did she relate?

Ms. GORHAM. She simply stated, to the best that I can recall, that she believed that something had been found.

Senator SHELBY. What was your reaction to that?

Ms. GORHAM. I asked her not to tell me.

Senator SHELBY. Why?

Ms. GORHAM. Because it was too sad.

Senator SHELBY. OK. Did you ever talk to Ms. Tripp about this, about the note and the finding of the note?

Ms. GORHAM. I don't recall——

Senator SHELBY. I don't mean the note, I mean the slips of paper.

Ms. GORHAM. I don't recall if we had a conversation about that.

Senator SHELBY. Ms. Tripp, in your deposition, I believe dated July 12, 1995, you recall this, and I'll just refresh your recollection. This is on pages 121 to 126, by counsel. Let me get into it:

Question: Mrs. Tripp, bearing in mind the subject matter that the Senate is now looking at—meaning the handling of the papers in Mr. Foster's office—are you aware of any other evidence that you might have that the Senate should be aware of, any observations you had, any discussions you had?

Answer: I'm not fully aware of what you are aware of and what you are not aware of, so I don't know what would be relevant anyway.

Question: Do you recall any other discussions you've had with anyone about the circumstances—other than law enforcement of the circumstances in which this note was found in the briefcase?

I believe this must have been asked by your counsel:

And would you include in 'law enforcement' the Office of Independent Counsel and the Committee counsel?

Yes, I'm excluding it.

Then you answered:

Answer: Well, only that I would reiterate that this was—there is a definite—the sticky notes obviously turned out to be the other note, and it appears that I was one of the few who thought that, so perhaps I'm wrong. I don't think I——

I'll go to the next question:

Question: Did you ever hear any discussions while you were in the Counsel's Office other than those you've testified to with regard to the circumstances in which the note was discovered? Did you ever hear Bernie discuss it with someone else, for example?

Answer: Well, there was a great deal of dialog in the outer office after it was discovered, but nothing substantive, nothing that—no, nothing of any worth. Just speculation as to whether he would have done such a thing. Would he have used a burn bag, the trash?

Is that Mr. Foster, "he"?

Ms. TRIPP. It is.

Senator SHELBY. The next question asked by our counsel was:

Question: You mean speculation as to whether the note was originally in the briefcase?

Your answer is:

Answer: Right.

Question: When did you hear such speculation?

Answer: Just during that timeframe after the note was found.

Question: Do you recall who had made—who had made such a comment?

Answer: Deborah.

Is that Deborah Gorham who is seated next to you?

Ms. TRIPP. Yes.

Senator SHELBY. The following question by our counsel was:

Question: She was surprised that the note was found in the briefcase?

Answer: Yes, I think so.

Question: She thought that Mr. Foster was, you know, a tidy person and if he was going to tear something else up he would have thrown it in the garbage, for example?

I believe this is your counsel who says:

I don't know how this witness could testify what Deb thought about how——

Our counsel then says:

Well, I thought Deb said——

Your counsel interrupts to say:

Well, then you should phrase the question that way. It's an inappropriate question the way you phrased it.

Our counsel continues:

Question: Did Deb—meaning Ms. Gorham—say to you that she believed that if he was going to tear up a note he would have thrown it in the garbage or into his burn bag?

Answer: Deb said that, and said that Lisa had made a similar comment.

Who is "Lisa" here?

Ms. TRIPP. That refers to Mrs. Foster.

Senator SHELBY. OK.

Question: And what did Deborah tell you about what Lisa Foster said about the discovery of the note?

The answer by you, Ms. Tripp, was:

Answer: My only clear recollection is that Deborah—meaning Ms. Gorham—said that she and Lisa—meaning Lisa Foster—not necessarily exchanging viewpoints but that she and Lisa both felt on their own that it was unlikely that he would do such a thing.

Question: Meaning that he would leave a torn-up note in his briefcase?

Answer: Right.

Question: And did they say why they believed that it was unlikely that Mr. Foster would leave a torn-up note in his briefcase?

Answer: Deborah—meaning Ms. Gorham—offered that he would have more likely torn it up and thrown it away in the trash and that she felt Lisa had said as much as well.

Now, did it surprise you, Ms. Tripp, that they found or allegedly found torn-up pieces of paper in the briefcase that had supposedly been searched before after this period of time of some week, 7, 8 days after Mr. Foster died? Did it occur to you as unusual?

Ms. TRIPP. I remember thinking at the time that it was so sad that the yellow sticky notes had been there all along, and were likely not yellow sticky notes after all.

Senator SHELBY. When you refer to torn-up pieces of yellow pad, a legal pad, you are talking basically, aren't you, about what lawyers, paralegals and so forth use, a size of legal pad about that size more or less? In other words, not routine size, but a longer pad?

Ms. TRIPP. I chose never to look at the ripped-up note, so I never did see.

Senator SHELBY. For sure?

Ms. TRIPP. Yes, sir.

Senator SHELBY. Why, Ms. Gorham, did you think about yellow sticky notes as opposed to, as Senator Grams referred, torn-up pages? In other words, torn-up notes would not be of uniform size as opposed to sticky notes that we use, all of us at times, which would be of uniform width and size.

Ms. GORHAM. I'm sorry, sir, would you please rephrase that question?

Senator SHELBY. Yes, in your eyes, if you saw this you would think, would you not, maybe this is yellow sticky note pads?

Ms. GORHAM. I would call it a yellow sticky or Post-it note pad.

Senator SHELBY. Absolutely. You are used to seeing this, we use it, tear it off, stick it somewhere; is this right, all of us?

Ms. GORHAM. That's correct.

Senator SHELBY. OK. The yellow sticky notes as opposed to a note that was written on a yellow pad and torn in pieces would not be of uniform size, would they?

Ms. GORHAM. That's correct.

Senator SHELBY. Now, let's get back to what you saw. When you saw out of the corner of your eye, did you see something yellow in the briefcase or did you see something you thought would be yellow sticky notes?

Ms. GORHAM. Let me let you know that it was Mr. Foster's frequent request that I throw yellow stick-um Post-it notes into the bottom of his briefcase. But I only remember seeing the color of yellow, not the form or shape or if there was writing on it or not.

Senator SHELBY. Did Mr. Foster use little notes of uniform width, little sticky notes, at times?

Ms. GORHAM. He did for me, in correspondence for me.

Senator SHELBY. To write notes back and forth. On the day of Mr. Foster's death that you were working there, did you put any yellow sticky notes in his briefcase?

Ms. GORHAM. I don't recall if he requested me to do that on that day or not.

Senator SHELBY. Could you have put some in there?

Ms. GORHAM. It is a possibility, but I do not recall.

Senator SHELBY. OK. Did Mr. Neuwirth ever discuss with you, Ms. Tripp, what he found in the briefcase, or allegedly found?

Ms. TRIPP. I don't recall if eventually we had a conversation about that, but not at the time certainly.

Senator SHELBY. When this was found in the briefcase or allegedly found in the briefcase, did that set off alarm bells in the Counsel's Office in the White House? You were there.

Ms. TRIPP. What do you mean exactly?

Senator SHELBY. Was there deep concern about what was found in the briefcase?

Ms. TRIPP. At the time, I was only aware that something had been found and that was Steve Neuwirth's answer to my question.

Senator SHELBY. Do you know, of your own knowledge, when these notes were found, was the Justice Department, the FBI, the Park Police notified immediately and given copies of what was there?

Ms. TRIPP. No, I was told there was a conscious decision not to do that at that point.

Senator SHELBY. Why?

Ms. TRIPP. Bernie told me at one point that it was appropriate to allow Lisa Foster to see this firsthand prior to anyone else seeing it as well as allowing the President the opportunity to know of its existence.

Senator SHELBY. Mr. Chairman, thank you for your indulgence.

The CHAIRMAN. Thank you. We've agreed that we're going to keep this going on our side and that Mr. Ben-Veniste will wrap it up. I think we have one, if not two more Senators.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you. Thank you, Mr. Chairman.

Ms. Tripp and Ms. Gorham, I'll be somewhat brief in the questions I ask, and the shorter the answer, the better.

Ms. Tripp, was it your impression that Mr. Foster worked mostly on personal matters related to the Clintons while at the White House?

Ms. TRIPP. Yes, I believe so.

Senator FAIRCLOTH. Did he work particularly close with Ms. Clinton on these personal matters?

Ms. TRIPP. Yes, sir, I believe so.

Senator FAIRCLOTH. What personal business was Mr. Foster working on immediately prior to his death?

Ms. TRIPP. At no time did I have any direct information as to what personal business Mr. Foster was working on on behalf of the Clintons.

Senator FAIRCLOTH. Did the amount of time he spent on these matters bother you to the point where you spoke with Mr. Nussbaum about it?

Ms. TRIPP. I would certainly not characterize it as bothering me. That puts a negative connotation on it. I questioned, because of my experience in the Bush White House, the practice that I was observing in this White House.

Senator FAIRCLOTH. You mentioned to Mr. Nussbaum that he was spending an inordinate amount of time on these personal matters?

Ms. TRIPP. No. Again, sir, I questioned the role of the Deputy Counsel in the Clinton Administration as opposed to what I had perceived it to be in the Bush Administration.

Senator FAIRCLOTH. What was it that caused you to finally go to Mr. Nussbaum about this?

Ms. TRIPP. Senator Faircloth, it was not a query in terms of a bothersome query. It was more a question of interest.

Senator FAIRCLOTH. Do you recall the names of other companies besides Whitewater that Mr. Foster was working on for the Clintons?

Ms. TRIPP. I had never at any time heard the word "Whitewater."

Senator FAIRCLOTH. How did you know that Mr. Foster was working on Whitewater?

Ms. TRIPP. I did not know that Mr. Foster was working on Whitewater at that time.

Senator FAIRCLOTH. Did you know that Mr. Foster was working on the Clintons' taxes?

Ms. TRIPP. Yes, sir, I did.

Senator FAIRCLOTH. Was Ms. Clinton a frequent visitor to Mr. Foster's office?

Ms. TRIPP. She was a visitor, yes, sir.

Senator FAIRCLOTH. Was she a frequent caller to Mr. Foster?

Ms. TRIPP. To the best of my recollection, she was a more frequent caller than she was a visitor.

Senator FAIRCLOTH. How about Ms. Williams, was she often there in Mr. Foster's office?

Ms. TRIPP. Yes, sir.

Senator FAIRCLOTH. You said no?

Ms. TRIPP. I said yes, sir.

Senator FAIRCLOTH. Yes, she was there. Was Mr. Foster a frequent visitor to Ms. Clinton's office and caller to that office?

Ms. TRIPP. I can't define "frequent" to your satisfaction or mine. I would say that he spent the greater majority of his time in his office and visited, on occasion, when necessary, Mrs. Clinton's office or Mrs. Williams' office.

Senator FAIRCLOTH. Would you say three or four times a day when she was there?

Ms. TRIPP. Again, I can't give you a sense of how frequently.

Senator FAIRCLOTH. Ms. Tripp, when did you first hear that Maggie Williams and Patsy Thomasson had been in Mr. Foster's office on the night of July 20, 1993?

Ms. TRIPP. Senator Faircloth, I don't know when I first received that information.

Senator FAIRCLOTH. Did you ever hear anyone discuss or hear anyone with firsthand knowledge or secondhand knowledge about whether Ms. Williams or Ms. Thomasson may have taken documents from Mr. Foster's office that night?

Ms. TRIPP. Do I have any such knowledge, is that the question, sir?

Senator FAIRCLOTH. Did you ever hear anyone discuss or have knowledge that they took—in other words, the question is, do you have firsthand or secondhand knowledge that Maggie Williams and Ms. Thomasson took documents from Foster's office?

Ms. TRIPP. No, sir. Only the speculation in the press.

Senator FAIRCLOTH. Did you not say at one time that you knew he was working on a real estate venture?

Ms. TRIPP. I was told by Deborah Gorham that one of the things he was working on was real estate. She never at any time ever mentioned the word "Whitewater." It was not a word I knew.

Senator FAIRCLOTH. Ms. Tripp, as you know, Maggie Williams took documents from Foster's office over to the residence where she met Carolyn Huber and they were put in a closet. Was Ms. Huber a frequent visitor to Mr. Foster's office and would she bring files to and from Mr. Foster's office on occasion?

Ms. TRIPP. Carolyn Huber——

Senator FAIRCLOTH. Huber.

Ms. TRIPP. —was a fairly frequent visitor.

Senator FAIRCLOTH. Ms. Huber was a frequent visitor, so can you speculate that maybe these were documents coming and going directly from Foster to the Clintons?

Ms. TRIPP. Can I speculate on——

Senator FAIRCLOTH. Would you say that these were documents going directly—since Ms. Huber was handling them, that they were documents moving directly from Mr. Foster to the Clintons personally?

Ms. TRIPP. I have no idea what Carolyn Huber carried in her arms at any given time.

Senator FAIRCLOTH. Let me ask you about the FBI interview you gave on April 18. This has been made public as a result of the hearing. You said, and I'll read rather rapidly, "Ms. Tripp was surprised"——

Senator SARBANES. Would the Senator identify the interview that's been made public so we could get it out?

Senator FAIRCLOTH. It was published in last year's hearing, it looks like page 1534.

Senator SARBANES. All right.

Senator FAIRCLOTH. Volume II.

The CHAIRMAN. Do you have a copy there, Counsel?

Mr. BEHRE. No, I do not.

The CHAIRMAN. I will ask staff to make available a copy to the counsel and Ms. Tripp.

Senator FAIRCLOTH. This is the only copy we have.

The CHAIRMAN. Do we have a copy? We're going to make a few copies, so you'll have it there. We don't want to proceed without you having it in front of you, so we'll suspend.

I'm just wondering, while we're waiting for this to be made, Ms. Gorham, were you Vince Foster's personal assistant?

Ms. GORHAM. Yes, sir.

The CHAIRMAN. Were you primarily the person who did his work, then? In other words, did his typing? He didn't use the computer, as a rule, himself, did he?

Ms. GORHAM. That's correct, to both.

The CHAIRMAN. So if he was working on documents, et cetera, you were the person who prepared them for him?

Ms. GORHAM. Yes, sir.

The CHAIRMAN. No one else did them?

Ms. GORHAM. Only for a brief period of time when I was on vacation for a week.

The CHAIRMAN. OK. Ms. Tripp, you understand that at some point in time Vince Foster was working on some—I don't want to put words in—real estate matter?

Ms. TRIPP. Let me clarify. That sounds somewhat mysterious.

The CHAIRMAN. Because I was just trying to——

Ms. TRIPP. On any given occasion Deborah's work schedule was extremely heavy. She took a great amount of small Dictaphone transcription from Mr. Foster, and periodically one, if not myself someone else, would ask her what she was working on. It was never something that we were familiar with, and often she would just say it's personal for the Clintons or it's personal financial for the Clintons or something to that effect. There was never a discussion about their finances, certainly, nor was there discussion about any landholdings. The words "real estate" came up in that context.

The CHAIRMAN. So it was a general description?

Ms. TRIPP. Yes, sir.

The CHAIRMAN. Ms. Gorham, I take it on occasion you did chat with your colleague, Ms. Tripp, as it related to the kinds of things you were working on, as she has just indicated to us; is that correct?

Ms. GORHAM. Possibly occasionally, yes.

The CHAIRMAN. It's understandable. Now, let me ask you, do you recall ever having shared with her the idea that you were working on some personal matters involving real estate or real estate transaction?

Ms. GORHAM. I could have.

The CHAIRMAN. You have no idea what transaction; no name?

Ms. GORHAM. Possibly Ms. Tripp might refer to some folders and some brochures regarding the possibility of a Clinton family residence or home in Arkansas.

The CHAIRMAN. But you have no memory of a Whitewater file?

Ms. GORHAM. I recall a Whitewater file, yes, sir.

The CHAIRMAN. Do you recall working on anything in connection with that?

Ms. GORHAM. No, I do not.

The CHAIRMAN. Do you recall the 1992 tax file?

Ms. GORHAM. I cannot recall it at this day.

The CHAIRMAN. OK. I interrupted Senator Faircloth.

Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Tripp, this is the interview with the FBI, and I'll read it and read it rather quickly. It says:

> Tripp left him with some—left him with Tom Castleton while she went to get his lunch. She dumped a whole handful of M&M candies on his tray as a pleasantry. When she returned, Castleton was gone. Foster asked her what took her so long and said he had sent Castleton to go find her. Tripp was surprised that Foster would send Castleton to look for her because she had not been gone very long. Foster seemed in a rush. He sat at his couch eating and reading the newspaper. He removed the onions from his hamburger, which struck Tripp as odd in retrospect. She couldn't understand why he would do that if he was planning to commit suicide. It did not make sense to her that he would be worried about his breath if that were the case.

Given all this, why would Mr. Foster be in a rush to commit suicide? Do you have any reason to believe it may not have been suicide?

Senator SARBANES. Mr. Chairman, we've been over this ground repeatedly with Senator Faircloth. He keeps wanting to come back and plow it once again. I think the points have been made very strongly that it's not within the scope of the inquiry. I don't know why he feels compelled to put the Foster family and others back through this again. We went into it last summer and it's not part of our scope of inquiry for these hearings. You've been clear about that earlier on. I would hope that you would be equally clear about it now.

The CHAIRMAN. Senator, I thought you were going to refer to materials that this young man, Tom Castleton, may have been carrying back and forth, et cetera. I did not believe you were going to go into the mental state of Mr. Foster as it possibly relates to——

Senator FAIRCLOTH. Mr. Chairman, Ms. Tripp did not testify last summer.

The CHAIRMAN. Let me say this to you: There may be a need at some point in time, and I believe—and counsel can correct me if I'm mistaken—that the Special Counsel is reviewing the question and has indeed hired one of the world's leading forensic experts as it relates——

Senator FAIRCLOTH. We'll move on.

The CHAIRMAN. —to the death of Vince Foster, but I think it would be appropriate for us to get that information first.

Senator FAIRCLOTH. I'll move to Ms. Gorham. You were Vince Foster's personal secretary and you kept his files; is that correct?

Ms. GORHAM. It is.

Senator FAIRCLOTH. Ms. Gorham, in the file drawer next to Mr. Foster's desk, you recall seeing two files, one was about Waco and the other labeled "Sean Hayden." What other files were in that drawer?

Ms. GORHAM. I don't recall at this time, sir.

Senator FAIRCLOTH. Do you remember the files on Waco and Sean Hayden?

Ms. GORHAM. I only remember the names.

Senator FAIRCLOTH. Ms. Gorham, in Mr. Nussbaum's safe, Mr. Foster had two envelopes, one marked for "eyes only Bill Kennedy," and the other was marked "Janet Reno." Can you tell me what was in these envelopes?

Ms. GORHAM. Sir, I cannot attribute those envelopes to ones belonging to Mr. Foster, as I've testified.

Senator FAIRCLOTH. Do you know what happened to them?

Ms. GORHAM. To those envelopes?

Senator FAIRCLOTH. Yes.

Ms. GORHAM. No, sir.

Senator FAIRCLOTH. You don't know where they are now?

Ms. GORHAM. No, sir.

Senator FAIRCLOTH. To the best of your knowledge, of the papers in Vince Foster's office, do you ever remember seeing any papers or any work that Mr. Foster did in regard to Mrs. Clinton's commodity trades?

Ms. GORHAM. No, sir.

Senator FAIRCLOTH. There was nothing there that you worked with? You don't remember any files in connection with the trading of Mrs. Clinton's commodities in the office at any time?

Ms. GORHAM. No, sir, I do not.

Senator FAIRCLOTH. Mr. Chairman, the witness——

Senator SARBANES. Mr. Chairman, let me just make the point Ms. Gorham responded, but that, again, is clearly outside the scope.

The CHAIRMAN. Yes, but Ms. Gorham responded that she has no knowledge or recollection.

Senator FAIRCLOTH. Ms. Gorham, Webster Hubbell testified last week that while he was Assistant Attorney General he recused himself for matters relating to the Bank of Credit and Commerce International, known as BCCI. Did Mr. Foster ever work on or maintain files on matters relating to BCCI?

Ms. GORHAM. Sir, I don't recall if he did or did not.

Senator FAIRCLOTH. How about the firms Syst-A-Matics or Inslaw, do you ever remember files on or working on those?

Ms. GORHAM. I do not recall files with those names.

Senator FAIRCLOTH. The weekend before Mr. Foster's death, President Clinton spent 4 hours in a private dinner with David Edwards, an international currency trader who was instrumental in securing a $20 million private donation to the University of Arkansas shortly after President Clinton was elected. Did Mr. Foster ever work on any matters relating to David Edwards or this $20 million donation to the University of Arkansas?

Ms. GORHAM. I do not recall any matters.

Senator FAIRCLOTH. Ms. Gorham, there have been news reports that Mr. Foster traveled to Switzerland shortly before he joined the

White House and that he had plane tickets to go back there in early July 1993. Do you know if Mr. Foster visited Switzerland or had plans to go while you worked for him?

Ms. GORHAM. I do not.

Senator FAIRCLOTH. That's all. Thank you, Mr. Chairman.

The CHAIRMAN. OK. Senator Bennett.

Senator SARBANES. Mr. Chairman, what's your intention here in terms of——

The CHAIRMAN. My intention is——

Senator BENNETT. I will be very brief.

The CHAIRMAN. —to attempt to conclude this so we will get a few minutes break.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. I don't want to replow ground, but I do have a few curiosity questions that I'd like to get answered as long as you're here and available, and I appreciate your endurance and salute it.

I don't know why I'm hung up on this box issue, but I do think it's important for us to have a sense of how many records were taken out of the General Office suite of the Counsel to the President and placed in the residence. As I was coming back here, I saw a box in the hallway. If I may, I'd like to show it to you and have you say gee, that's roughly the size of the box that Tom Castleton carried away or it's bigger or smaller or I still don't recall.

Senator SARBANES. Get ready for the picture.

Senator BENNETT. It's a fairly ordinary box that was in the hallway and I think it fits, Ms. Gorham, what you were saying about so many reams of paper. This is supposed to hold 10 reams of paper. Was the box bigger than this or smaller than this or do you have any recollection?

Ms. GORHAM. I don't recall the exact size, but I believe that any normal man could carry two boxes of that size. It's certainly similar to the type of boxes that we, at the present time in the White House, keep reams of paper in.

Senator BENNETT. There were two boxes?

Ms. GORHAM. Yes, sir, I recall two boxes.

Senator BENNETT. OK. That's helpful. I had the impression from the earlier conversation that it was just one box, but there were two boxes roughly this size?

Ms. GORHAM. That's correct.

Senator BENNETT. I see. Thank you.

Ms. GORHAM. You're welcome.

Senator BENNETT. What word processing product do you use in the White House, WordPerfect, Microsoft Word? Do you know?

Ms. GORHAM. What software did we use in the White House? To the best I can recall, 2 years ago, probably WordPerfect.

Senator BENNETT. That can be helpful to us as we examine some of these things that are coming out now to see what product they were originally put in on.

Now, Ms. Gorham, you described a conversation with Mr. Nussbaum where the impression that I got—I'll put it in my words—was that it was an interrogation. He went at you very vigorously, he repeatedly asked you what you saw in the briefcase, almost as

if he were a prosecutor trying to break down your story. That's my interpretation of what you said. Is that a fair interpretation?

Ms. GORHAM. That is a correct interpretation.

Senator BENNETT. OK. I understand that the note had been found at the time that interrogation took place. We can check that, but it's my understanding that as of the time he was asking you those questions he already had the note. Why didn't he ask you about the folder you said you saw? This is the first time I've ever heard of any folder having been seen in the briefcase. Did he ask you about that folder?

Ms. GORHAM. I don't recall if he asked me about that folder or not.

Senator BENNETT. But his primary focus was on the yellow pieces of paper?

Ms. GORHAM. His focus was on my explanation of what I found, which was the color yellow, and asking me to indicate or identify what size or shape or form.

Senator BENNETT. OK. When you say what you found, you're not leaving the impression that you found anything, it's what you had seen?

Ms. GORHAM. What I had seen out of the corner of my eye as I picked it up.

Senator BENNETT. OK. I'd like you to comment on the pattern that I see here. Here's an intense interrogation by Mr. Nussbaum, what did you see, and you can't satisfy him. He keeps coming back to it. The pattern that the two of you have testified to of the slamming of doors and the coming and going and we've got to have a typewriter in here for us to use shows a very high degree of concern over a fairly long period of time with the question what did somebody other than the tight group that came in with the Clintons see and know about this.

Is it fair to say that there was a bit of paranoia around here, or am I going farther than is proper?

Ms. GORHAM. Sir, I'm sorry, I cannot tell you how others felt, but I never felt paranoid.

Senator BENNETT. I'm not suggesting that you felt paranoia. I'm suggesting there is a pattern of behavior here that suggests to me a higher concern about what the staff may have seen and may be in on than I think we could explain just in terms of grief.

Ms. GORHAM. It would seem so by the amount of questioning that took place between Bernie and myself—Bernie questioning me.

Senator BENNETT. I see. Thank you, Mr. Chairman.

The CHAIRMAN. I have a couple of quick questions.

Senator Grams, do you have a question?

Senator GRAMS. Just a couple of quick questions.

The CHAIRMAN. Go ahead.

Senator GRAMS. I would like to talk to Ms. Gorham, again, about the briefcase, just briefly, and some unanswered questions that I had.

Ms. Gorham, do you recall seeing the briefcase in Mr. Foster's office the day after his death at all?

Ms. GORHAM. No, sir.

Senator GRAMS. Now, we're talking about the 26th, but you do not remember it in the office——

Ms. GORHAM. Are we talking about the 26th or the 21st?

Senator GRAMS. On the 21st and 22nd when you looked into the office at all, even when you spoke to I think it was Mr. Neuwirth about where things would be in the office, do you recall seeing the briefcase in the office?

Ms. GORHAM. The conversation with Mr. Neuwirth took place on Monday the 26th. On the Wednesday and Thursday following Mr. Foster's death, I did not peer into his office or go in his office. I stood outside the doorway with Mr. Neuwirth and somewhat looked over his shoulder on the morning after Mr. Foster passed away.

Senator GRAMS. Do you have any recollections of seeing the briefcase in there at that time?

Ms. GORHAM. No, sir. I saw nothing. I was looking for nothing. All I saw was that the lights were out.

Senator GRAMS. Mr. Spafford, who testified earlier, said in basic recollection that on the 22nd Mr. Nussbaum picked up the briefcase and it was full of files, and he basically emptied it and said something to the effect that I have all the files and documents from the briefcase.

Now, that was on the 22nd, but yet you said that on the 26th you noticed inside the briefcase a gold folder and something yellow caught your eye. So there was still something in the briefcase then?

Ms. GORHAM. I noticed the top of a Goldcraft third-cut folder and the color of yellow.

Senator GRAMS. When I asked you before, you said you didn't look into the briefcase, but just a little while ago you said when I picked it up I noticed or caught a flash of something yellow. Why did you pick it up?

Ms. GORHAM. I picked it up to move it from the corner of Mr. Foster's desk to the edge of his bar, simply as a matter of helpfulness. Mr. Neuwirth had tripped over the satchel and I thought I would be helpful by moving it away from that area in case he came back and possibly tripped over it again.

Senator GRAMS. So at that time there was still a file in there, but you don't know what was in the file, if anything?

Ms. GORHAM. I don't recall. I only recall seeing the color of yellow and the top of a folder. I believe, I'm not quite sure, I might have seen that when I picked it up from the corner of his desk with my right hand and placed the other hand on my right hand, placing the whole satchel in my left hand to move it.

Senator GRAMS. When you say you saw something yellow, was it standing up alongside of the folder or was it something that caught your eye in the bottom of the briefcase?

Ms. GORHAM. I'm sorry, I only remember the color yellow. I don't know if it was at the bottom or on the side.

Senator GRAMS. But it caught your eye even just picking it up, and yet nobody had seen it or read it before then?

Ms. GORHAM. I don't know what they had seen or read.

Senator GRAMS. All right. Thank you very much, Ms. Gorham.

Ms. GORHAM. Your welcome.

The CHAIRMAN. Mr. Chertoff, do you have some questions?

Mr. CHERTOFF. I just have a couple of quick questions to follow up on what Senator Bennett and Senator Grams raised.

Now, Ms. Tripp, you indicated earlier in response, I think, to other questions that you had a conversation with Ms. Gorham about the yellow material in the briefcase before you went to the funeral on the 23rd; correct?

Ms. TRIPP. Yes, sir.

Mr. CHERTOFF. Ms. Gorham, you don't remember that conversation, but I take it you don't doubt that it happened?

Ms. GORHAM. I do not recall the conversation.

Mr. CHERTOFF. You have a recollection on the Monday of being in there and seeing yellow material in the briefcase and also seeing a folder; is that correct?

Ms. GORHAM. The top of a folder, yes.

Mr. CHERTOFF. With respect to either of those pieces of testimony, Ms. Gorham, do you have a sense before the interrogation by Mr. Nussbaum or talking to anybody else besides Ms. Tripp about what you had seen in the briefcase?

Ms. GORHAM. No, I do not recall.

Mr. CHERTOFF. Now, it's on the 26th, after going back and forth and in and out of Mr. Nussbaum's office, that Mr. Nussbaum brings you into his office to talk to you; right?

Ms. GORHAM. I don't recall going in and out of Mr. Nussbaum's office. I only recall going in once.

Mr. CHERTOFF. I'm sorry, others were going in and out and then he called you in?

Ms. GORHAM. That's correct. It was either that Monday evening or possibly Tuesday morning.

Mr. CHERTOFF. The two of you were by yourselves?

Ms. GORHAM. As best I can recall, we were.

Mr. CHERTOFF. I think you've made it very clear that you regarded this as an intense interrogation.

Ms. GORHAM. Yes, I did.

Mr. CHERTOFF. Your sense was that he was trying to find out what you had seen in the briefcase on earlier occasions.

Ms. GORHAM. I would say that's an accurate statement.

Mr. CHERTOFF. At the time, he had the briefcase with him?

Ms. GORHAM. I don't recall if he had it in his hand or in his desk or with him at all.

Mr. CHERTOFF. But you have a recollection, I gather, perhaps stimulated by the E-mail, that at least as of the time of this interrogation you understood that there was no longer anything in the briefcase?

Ms. GORHAM. That's correct.

Mr. CHERTOFF. So that the questioning was to determine what you had seen before and how much you had seen before; is that fair to say?

Ms. GORHAM. It certainly is.

Mr. CHERTOFF. Is there anything else you can remember about this interrogation you haven't told us about?

Ms. GORHAM. Nothing that I can recall at this time.

Mr. CHERTOFF. Was he probing in particular to see whether you had seen writing on the paper?

Ms. GORHAM. Yes, sir, he was.

Mr. CHERTOFF. Was he probing to see how much paper you had seen?

Ms. GORHAM. He probably was.

Mr. CHERTOFF. Was he probing to see if the paper you had seen was torn or whole?

Ms. GORHAM. Yes, he was.

Mr. CHERTOFF. Was he probing to see how many sheets you had seen?

Ms. GORHAM. I believe he probably would have been.

Mr. CHERTOFF. Was he probing to see what was in the folder?

Ms. GORHAM. I don't recall.

Mr. CHERTOFF. Was he probing to see what color the paper you saw was?

Ms. GORHAM. Absolutely.

Mr. CHERTOFF. Is it your sense he was trying to get a complete picture from you about everything that was in that briefcase when you saw it on an earlier occasion?

Ms. GORHAM. I believe that's a fair statement.

Mr. CHERTOFF. May I just have a moment, Mr. Chairman?

I yield the rest of my time, Mr. Chairman.

The CHAIRMAN. Let me say that the Minority side, in order to accommodate an orderly flow, has been very gracious and I think we've saved a lot of time. I want to thank both Mr. Ben-Veniste and Senator Sarbanes.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Let me see if I can recap, Ms. Gorham, in connection with what you saw and what your associations were in connection with that briefcase.

When you saw something yellow in the briefcase, in your mind you associated that with the fact that from time to time Mr. Foster had asked you to put these little yellow sticky notes in his briefcase so that he would have them to use; is that correct?

Ms. GORHAM. No, sir, I made no association at the time I picked up his satchel.

Mr. BEN-VENISTE. OK. Let me go back, then. You stated that from time to time Mr. Foster requested that you place some yellow stickies or Post-its in his briefcase; is that correct?

Ms. GORHAM. That is.

Mr. BEN-VENISTE. OK. So at the point when you saw something yellow, and you had your conversation with Ms. Tripp, do you think it's possible that you made the association between seeing something yellow and knowing from time to time that you put yellow Post-its in that briefcase?

Ms. GORHAM. I believe that could have been a fair association.

Mr. BEN-VENISTE. OK. So you did not focus any more on what it was because you had only glimpsed the color yellow in the bottom of the briefcase?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. So you were operating on the assumption that the paper that you saw in the bottom of the briefcase was most likely these yellow Post-its that you had put in Mr. Foster's briefcase from time to time?

Ms. GORHAM. Are you referring to the electronic mail messages, sir?

Mr. BEN-VENISTE. Even before you had your conversations during the week after Mr. Foster died that are referenced in the electronic mail messages.

Ms. GORHAM. I cannot tell you for sure. I also cannot tell you if we'd had prior conversations early in our tenure that this was a particular habit of Mr. Foster's.

Mr. BEN-VENISTE. Ms. Tripp, as far as you recollect, by the time Ms. Gorham had made this comment to you, the association was that these were yellow stickies; is that correct?

Ms. TRIPP. That was clearly stated.

Mr. BEN-VENISTE. OK. Now, Ms. Gorham, when you gave your first deposition you indicated that you had not seen the index that was prepared for some time; is that correct? I'm talking about the index of files in Mr. Foster's credenza. Do you remember being questioned about that?

Ms. GORHAM. By——

Mr. BEN-VENISTE. In your first deposition——

Ms. GORHAM. Yes, I do.

Mr. BEN-VENISTE. One of the Senators today made reference to that testimony. Is it correct that at the time you gave that deposition you had not been shown Exhibit Z1123? That had not yet been retrieved from the hard drive by the White House; correct?

Ms. GORHAM. Sir, I'm sorry, I cannot recall if I viewed that at my deposition or not.

Mr. BEN-VENISTE. Would it refresh your recollection if I were to suggest to you that following your deposition when you were looking over the transcript, two staffers came to you and your attorney and showed you these materials?

Ms. GORHAM. Yes, sir, that is when I was shown these materials.

Mr. BEN-VENISTE. So it was after your deposition had been completed, the first part of your deposition?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. So when you answered that you had not seen that index up until that point, you had not been shown what you have seen here today?

Ms. GORHAM. In relationship to the deposition, yes, right.

Mr. BEN-VENISTE. OK. That clarifies that.

With respect to Mr. Foster's habits in terms of transcribing materials, he used a Dictaphone; correct?

Ms. GORHAM. Correct.

Mr. BEN-VENISTE. Did he also give personal dictation to you?

Ms. GORHAM. Very little, if any, that I ever recall.

Mr. BEN-VENISTE. OK. But most of the work was done by his dictating into a Dictaphone?

Ms. GORHAM. That's correct.

Mr. BEN-VENISTE. Did you ever see him utilize his computer?

Ms. GORHAM. No, I did not ever see him utilize his computer.

Mr. BEN-VENISTE. There was a computer in his office?

Ms. GORHAM. Yes.

Mr. BEN-VENISTE. But it was your understanding that this was not something that he was either familiar with or was trying to learn about or utilize?

Ms. GORHAM. That's correct. I could expand on that and tell you that, as I mentioned, for the brief period of time I was on vacation

in early April he asked that I set up a list of instructions on how he would attain access into WordPerfect, if, indeed, that's the software that we used, and how he would create a document on his own. I left him a list of instructions, and I know that at a later date he attempted to create a document, but was unable to complete it.

Mr. BEN-VENISTE. So, to the best of your knowledge, he never really used that computer?

Ms. GORHAM. No, sir. I believe that's the only time he made an attempt.

Mr. BEN-VENISTE. I have nothing further. Thank you, Senator.

The CHAIRMAN. I have one quick question. Obviously, if I open anything that you want to follow up on, I understand that.

Ms. Tripp, there came a point in time when Ms. Gorham mentioned to you the briefcase and seeing the yellow stickies, or some yellow paper at the bottom of the briefcase. Did you have occasion that you can recall to mention that to anyone else afterward?

Ms. TRIPP. That's a good question. I don't remember.

The CHAIRMAN. OK. You just have no memory. You may have, you may not have?

Ms. TRIPP. I may have and I'm just unclear as to whether I did or not.

The CHAIRMAN. All right. Because that may have explained why, Ms. Tripp, if you had mentioned the incident to somebody, Mr. Nussbaum was interested in what Ms. Gorham may have seen later. So that's why I raise that question, but I have no further questions.

Mr. BEN-VENISTE. I think that's an excellent point, Mr. Chairman. If I might just follow up on it.

The CHAIRMAN. Certainly.

Mr. BEN-VENISTE. Because of the assumption that this yellow paper at the bottom was just the stickies that Ms. Gorham had from time to time placed in Mr. Foster's briefcase, I take it that neither of you attributed any great significance to the fact that this was all that was left in the briefcase?

Ms. TRIPP. I had no knowledge of what Deb's practice was in putting anything in his briefcase, but when Deborah said there's nothing in there but a bunch of little yellow sticky notes, it sounded plausible and believable to me. I keep them at the bottom of my briefcase.

Mr. BEN-VENISTE. There wasn't anything that aroused your interest enough to say let's go look at those?

Ms. TRIPP. Absolutely not.

Mr. BEN-VENISTE. I take it that was your view as well, Ms. Gorham?

Ms. GORHAM. I'm sorry, I don't recall the conversation.

Mr. BEN-VENISTE. I have nothing further. Thank you, Mr. Chairman.

The CHAIRMAN. If no other Members of the Committee or panel have any questions, I want to thank both the witnesses and their counsels for their cooperation and for their appearance today.

Ms. GORHAM. You're welcome.

Ms. TRIPP. Thank you.

The CHAIRMAN. We will stand in recess until after the vote. I understand there's a vote at 2:15. That means that we should be back about 2:30 or thereafter. We stand in recess.

[Whereupon, at 1:30 p.m., the hearing was recessed, to be reconvened at 2:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will resume. We'll ask our panel, Mr. Langston, Mr. Hume and Mr. Markland to come forward, please. Gentlemen, will you stand for the purpose of having the oath administered.

[Witnesses sworn.]

Gentlemen, starting with Mr. Langston and working over, if you have a statement that you would like to give to the Committee, we would be pleased to take it. We want to thank you for your cooperation and for being here and for being so patient.

Mr. Langston.

SWORN TESTIMONY OF ROBERT E. LANGSTON CHIEF, U.S. PARK POLICE

Mr. LANGSTON. Thank you, Mr. Chairman. Good afternoon Members of the Committee, Mr. Chairman. I'm Robert Langston. I'm a 30-year veteran of the U.S. Park Police and I have been Chief of Police since 1991.

First, I want to thank the Committee for the courtesy and the respect that you extended to the Park Police officers that were up here recently testifying before this Committee. I certainly appreciate that.

With the Committee's indulgence, I'd like to take this opportunity to clear up some misconceptions about the police force that I proudly represent. Twenty-two percent of the District of Columbia is administered by the National Park Service and comprises our primary jurisdiction. In 1882 Congress passed legislation granting us the same powers and authority as the Washington Metropolitan Police and later expanded our authority to include the Federal parks and the parkways in nearby Maryland and Virginia which includes, of course, Fort Marcy. In 1976, Congress authorized us to establish field offices in two new Federal urban parks: the Golden Gate National Recreation Area in San Francisco and the Gateway National Recreation Area in New York City.

Our force currently numbers 623 sworn officers who are assigned to these two urban parks and here in Washington, DC. Recently we were requested to provide security for the Statue of Liberty.

Visitors to our national parks across the country often confuse our park rangers with Park Police. Some park rangers are armed and are known as law enforcement rangers. We both work for the Department of Interior, National Park Service; however, the training and mission of the National Park Service law enforcement ranger and the U.S. Park Police officer vastly differ.

We manage more than 1,000 demonstrations and special events annually, often dealing with crowds upward of 400,000. We enforce traffic laws and provide traffic control. We work in concert with other Federal law enforcement agencies to provide security for the President of the United States and for the many visiting dignitaries that visit our Nation's capital. We have a cadre of highly trained investigators who handle felony cases and who frequently work on task forces targeting crime.

In addition to our statutory authority and jurisdiction, we entered into more than 60 memorandums of understanding with other agencies like the Secret Service, the Capital Police, police de-

partments in New York City and San Francisco, the Department of Navy for responsibility to Camp David, the Department of Army for police services at Arlington National Cemetery and many memorandums of understanding with the different county and municipal police departments.

There's no way to give a full description of our jurisdiction and duties, but I hope this will serve to clarify the roles and functions Congress has charged us to provide. I'd like to mention a couple of incidents you may remember that have placed us in the news, other than the one that brings us here to this Committee today.

The U.S. Park Police helicopter crew rescued the only survivors of Air Florida 90 that crashed into the 14th Street Bridge in 1982. Two years ago ships carrying hundreds of illegal immigrants ran aground in Rockaways up in Breezy Point or the Gateway National Park in New York. U.S. Park Police officers were first on the scene and forefront in their efforts to save scores from drowning. Just a few months ago Park Police officers assigned to Golden Gate in San Francisco arrested an individual who was featured in "America's Most Wanted" along with a cache of grenades, grenade launchers and automatic weapons that were in the trunk of his vehicle.

Last year 50 of the Park Police officers were assigned to the Violent Crime Task Force here in DC up in the Washington Fifth District. There, they handled in a brief period of time 3,800 cases. We had 1,412 arrests, 118 stolen vehicles, executed 41 search warrants and arrested 102 wanted persons. We are a full service urban law enforcement police organization.

Mr. Chairman and Members of the Committee, I'm here to answer your questions and to assist you as much as I can. Thank you.

The CHAIRMAN. Thank you, Mr. Langston.

Sergeant Markland.

SWORN TESTIMONY OF PETER W. MARKLAND
SERGEANT, U.S. PARK POLICE

Mr. MARKLAND. Mr. Chairman, Members of the Committee, my name is Peter W. Markland. I'm a Sergeant with the U.S. Park Police. Currently, I'm assigned in charge of a SWAT team in the Special Forces branch. In 1976 I joined the Executive Protective Services now known as the U.S. Secret Service Uniformed Division. I was trained at the Federal Law Enforcement Training Center referred to as FLETC in Brunswick, Georgia.

After completing specialized training at Beltsville, Maryland, I was assigned to the White House. In 1978, I joined the U.S. Park Police and underwent additional training at FLETC. After serving in the Patrol branch I joined the Narcotics and Vice Unit as a plainclothes investigator in 1984. Among other special assignments, I have worked on the Drug Enforcement Administration Task Force. I graduated first in my class from FLETC's Criminal Investigators School. In 1991 I was promoted to the rank of Detective in the Criminal Investigation branch, and in August 1993 I was promoted to the rank of Sergeant.

During my career I received numerous commendations from my Department, the Washington Metropolitan Council of Governments, the Drug Enforcement Administration, the Secretary of the Interior, the U.S. Attorney for Washington, DC, the Metropolitan

Police Department of Washington, DC and the U.S. Attorney for the District of Maryland. Thank you.

The CHAIRMAN. Thank you very much, Sergeant.

Captain Hume.

SWORN TESTIMONY OF CHARLES W. HUME
CAPTAIN, U.S. PARK POLICE

Mr. HUME. Mr. Chairman, I don't have an opening statement, but I'll introduce myself. I'm Charles Hume. I'm a Captain with the U.S. Park Police; I hold the position of Assistant Commander of our Criminal Investigations branch in Washington, DC.

The CHAIRMAN. You have been with the service for how many years, Captain?

Mr. HUME. With the U.S. Park Police for 25 years.

The CHAIRMAN. Thank you very much, Captain.

Mr. HUME. Sir.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman. Good afternoon. I'll be asking each of you a series of questions. I'd like to begin with you, Sergeant Markland. You've been with the Park Police, am I correct, since 1978?

Mr. MARKLAND. That's correct, sir.

Mr. GIUFFRA. So that's 17 years?

Mr. MARKLAND. Almost 18, yes.

Mr. GIUFFRA. You were the detective assigned to investigate the death of Vincent Foster?

Mr. MARKLAND. Assigned on the 21st, yes, sir.

Mr. GIUFFRA. On the 21st, did there come a time when you went to the White House?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Why did you go to the White House on July 21st?

Mr. MARKLAND. My intention was to interview co-workers of Mr. Foster and also to search his office to see if we could find some documentation.

Mr. GIUFFRA. Why did you want to search Mr. Foster's office and what sort of documentation were you looking for in Mr. Foster's office?

Mr. MARKLAND. Anything that we could find, especially anything that might support the physical evidence we had that indicated a suicide.

Mr. GIUFFRA. Were you interested in looking for a suicide note?

Mr. MARKLAND. Yes, sir.

Mr. GIUFFRA. Were you interested in looking at his diary if he maintained a diary?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Were you interested in seeing who might have visited him in the hours before he died?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Possibly looking at telephone calls to him on July 20th, which was the day he died?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Were you interested in looking to see what sort of matters he was working on at the White House to see if any might have bothered him?

Mr. MARKLAND. Yes, we would be.

Mr. GIUFFRA. Were you allowed to search Mr. Foster's office on July 21st?

Mr. MARKLAND. No, sir, we were not.

Mr. GIUFFRA. Why were you not allowed to search Mr. Foster's office on July 21st?

Mr. MARKLAND. Mr. Nussbaum advised us, Captain Hume and I, that we would have to contact the Justice Department to make those arrangements.

Mr. GIUFFRA. Now, on the morning of July 21st when you arrived at the White House, was it your understanding that Park Police officers had requested the night before, July 20th, that the White House seal Mr. Foster's office?

Mr. MARKLAND. Yes, the White House had been asked to secure the office, and we didn't have anything that indicated that they did not.

Mr. GIUFFRA. So it was your understanding when you arrived at the White House on the morning of July 21st that the office had been sealed?

Mr. MARKLAND. Yes, sir.

Mr. GIUFFRA. Now, to you, sir, what does it mean to seal an office?

Mr. MARKLAND. To physically secure the office so that it would remain in the same condition when we got ready to search it.

Mr. GIUFFRA. Would someone be allowed to enter an office when it was sealed?

Mr. MARKLAND. No.

Mr. GIUFFRA. Now, sometime on July 21st, did you learn that the office had not been sealed on July 20th?

Mr. MARKLAND. Yes. I believe it was around 10 a.m. that morning.

Mr. GIUFFRA. How did you learn that the office was not sealed on July 20th?

Mr. MARKLAND. I believe that information came both from the Secret Service and Mr. Nussbaum.

Mr. GIUFFRA. What was your reaction when you learned that the office had not been sealed on the night of Mr. Foster's death?

Mr. MARKLAND. I was disturbed about that.

Mr. GIUFFRA. Why were you disturbed that the office had not been sealed?

Mr. MARKLAND. Because even had it been sealed at that time, we would have had the additional work of trying to recreate who had been in there, what they had done in there and what they had removed or brought into the office, if anything.

Mr. GIUFFRA. Were you concerned about possible contamination of the evidence that might be contained in Mr. Foster's office?

Mr. MARKLAND. Yes, I was.

Mr. GIUFFRA. What effect did the failure to seal Mr. Foster's office have on your investigation into Mr. Foster's death?

Mr. MARKLAND. The fact that it had not been sealed and the subsequent events of the next 2 days rendered what we could get from that office fairly useless. We did not have firsthand information on what we could have obtained from that office had it been sealed the evening before.

Mr. GIUFFRA. Chief Langston, on the morning of July 21st you were briefed by Major Hines and other officers of the Park Police; am I correct?

Mr. LANGSTON. That's correct.

Mr. GIUFFRA. Were you advised that Park Police officers had asked that Mr. Foster's office be sealed on the night of Mr. Foster's death, July 20, 1993?

Mr. LANGSTON. Yes, I was advised that it would be sealed.

Mr. GIUFFRA. Captain Hume, do you have any recollection of knowing whether there had been a request made to seal Mr. Foster's office on the night of his death?

Mr. HUME. No, I don't. I didn't find out about that until, actually, I arrived at the White House the morning of the 21st. My recollection is that we were granted that request probably somewhere around 11 a.m. I had asked Detective Markland if he would note in his notebook the time that we made the request to have the office sealed. I was busy that morning when I had come into the office, and I did not have what I would consider a full briefing.

I had turned most of those matters over to Detective Markland to make the arrangements to get us up to the White House, and when I got up to the White House, I had asked through the Secret Service to have that office sealed. I had asked Detective Markland if he would note that in his notebook, and my best recollection of that, it was noted around 11:20 a.m. I believe the Secret Service had come back to us and said that, in fact, that office had already been sealed or posted. I'm not sure which word was used previous to our request. I think I found out later it was somewhere around 10 or 10:30 in the morning.

Mr. GIUFFRA. Detective Markland, on July 22, 1993, which was the next day, did there come a time when you interviewed certain members of the support staff of the White House Counsel's Office?

Mr. MARKLAND. Yes, sir, there did.

Mr. GIUFFRA. Were White House lawyers present during those interviews?

Mr. MARKLAND. Yes, they were.

Mr. GIUFFRA. Do you have any understanding as to why White House lawyers were present during the interviews that you conducted with the support staff of the Counsel's Office?

Mr. MARKLAND. I was relying on the Justice attorneys who were contacted to work out the details of how we would proceed at the White House, and I was told that counsel from the White House would be present during the interviews.

Mr. GIUFFRA. Did you have any belief as to why White House counsel were present at the interviews? Were they there to assist during the course of the interview, or were they there to report back to, for example, the White House Counsel as to what occurred during the course of those interviews?

Mr. MARKLAND. My belief was that they would report back to Mr. Nussbaum what was being said in the interviews.

Mr. GIUFFRA. Now, Sergeant Markland, in your experience, what is the ideal circumstance or way in which to conduct a witness interview?

Mr. MARKLAND. The ideal circumstance is a one-on-one interview, just yourself as the investigator and the subject being inter-

viewed. Many times, for various reasons, you will have two police officers and detectives interviewing one subject; no more than that.

Mr. GIUFFRA. Am I correct, in your experience, witnesses are less likely to be forthcoming to the police if, for example, a representative of their employer is present during an interview?

Mr. MARKLAND. Absolutely true.

Mr. GIUFFRA. Do you believe that the presence of White House lawyers during the interviews had any sort of a detrimental effect on your investigation?

Mr. MARKLAND. I do. The atmosphere of those interviews made it impossible to establish any kind of a relationship with the people being interviewed, yes.

Mr. GIUFFRA. What do you believe made it impossible to establish a relationship during the interviews?

Mr. MARKLAND. There were too many people present. There were Park Police present, FBI agents present and also members of the Chief Counsel's Office present during the interviews.

Mr. GIUFFRA. I believe at your deposition you testified at page 390 that you believed that the presence of these White House lawyers created an "intimidating situation." Do you still believe that's the case?

Mr. MARKLAND. Yes, I do.

Mr. GIUFFRA. Did you have the sense that the White House support staff witnesses would provide only so much information during these interviews?

Mr. MARKLAND. It was my belief that the staff members we were interviewing had been briefed beforehand and would say no more than what they were told they should tell us.

Mr. GIUFFRA. Did their testimony appear to you somewhat rehearsed?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Now, I'd like to direct your attention to a little bit later on July 22nd. Did there come a time when you were finally allowed to participate in a review of documents in Mr. Foster's office?

Mr. MARKLAND. I was present in Mr. Foster's office when Mr. Nussbaum reviewed the documents.

Mr. GIUFFRA. You were not allowed to look at any of the documents?

Mr. MARKLAND. No, sir.

Mr. GIUFFRA. I'd like to put up on the Elmo Markland Exhibit 1, which is a hand drawing that you prepared during your deposition that identifies the positioning of persons that were present during this review process. If I might, sir, where were the law enforcement officers positioned during the review process?

Mr. MARKLAND. All the law enforcement personnel were on the lower half of that diagram, as we look at it.

Mr. GIUFFRA. The White House officials were placed on the upper part, nearer to the desk?

Mr. MARKLAND. That's correct.

Mr. GIUFFRA. That's where the documents were; am I correct?

Mr. MARKLAND. Yes.

The CHAIRMAN. Where are the documents, on the desk?

Mr. MARKLAND. There were documents on the desk, in the desk and in a credenza to the right, as we look at it. There were also documents in the filing cabinet to the left, as we look at it.

The CHAIRMAN. OK.

Mr. GIUFFRA. So it would be your testimony that the law enforcement officers were placed in a position where they could not see the documents as Mr. Nussbaum was reviewing them?

Mr. MARKLAND. That's correct.

Mr. GIUFFRA. Could you, in your own words, describe, as best you recall, the process by which Mr. Nussbaum reviewed the documents in Mr. Foster's office?

Mr. MARKLAND. Mr. Nussbaum would go through the documents, give a brief, generic description of what they contained and decide whether or not they were strictly White House business, maybe of interest to the police, or personal papers of either the Clintons or the Foster family.

Mr. GIUFFRA. Do you believe that Mr. Nussbaum described every document that was contained in Mr. Foster's office?

Mr. MARKLAND. No, sir, I don't.

Mr. GIUFFRA. So he only identified some of the documents that were contained in Mr. Foster's office?

Mr. MARKLAND. Yes. Or he would go through a file drawer and just broadly say that they were strictly White House business.

Mr. GIUFFRA. Do you recall any reference to a file concerning something called Whitewater Development Corporation?

Mr. MARKLAND. No, I don't.

Mr. GIUFFRA. Do you have any understanding as to why White House officials did not want law enforcement officers to review the documents in Mr. Foster's office?

Mr. MARKLAND. Are you speaking about that time, on that date?

Mr. GIUFFRA. Just sitting here today, do you have any understanding or belief as to why Mr. Nussbaum did not want you to look at those documents during the course of that review?

Mr. MARKLAND. In my mind, at this time, I believe he was afraid we would have uncovered some indication of the Whitewater situation and other things that Mr. Foster was involved with that are just now coming to light.

Mr. GIUFFRA. Now, I think you just testified that Mr. Nussbaum decided what documents would be of interest to the police; is that correct?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Now, you would have wanted, under better circumstances, to have determined which documents were relevant to your investigation; am I correct?

Mr. MARKLAND. Yes, sir.

Mr. GIUFFRA. Why would you have wanted to have made the judgments as to what documents were relevant to your investigation?

Mr. MARKLAND. Because Captain Hume and myself were conducting the investigation into Mr. Foster's death.

Mr. GIUFFRA. Were you satisfied after Mr. Nussbaum had concluded his review of the documents in Mr. Foster's office with the process that he had undertaken?

Mr. MARKLAND. No, sir, not at all.

Mr. GIUFFRA. Why were you not satisfied with the process that Mr. Nussbaum had used to review the documents in Mr. Foster's office?

Mr. MARKLAND. As the investigator, we had no part in searching that office. I felt it was useless for us to even be there. Mr. Nussbaum was conducting the investigation, as far as that office went.

Mr. GIUFFRA. Did you feel as if you were window dressing for Mr. Nussbaum's review?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Now, at any time during the course of the review that Mr. Nussbaum conducted on July 22nd, did he advise you that he would conduct a second review of the documents in Mr. Foster's office later that day?

Mr. MARKLAND. It was my understanding that the office would be again posted and left undisturbed.

Mr. GIUFFRA. Did Mr. Nussbaum advise you that he would look at the documents again later during the day on the 22nd, that there would be a second review?

Mr. MARKLAND. I'm not sure if he said he was going to do it at that time. There were documents he was going to review further, yes.

Mr. GIUFFRA. Would you have wanted to be present during that second review that Mr. Nussbaum was going to conduct?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Were you given an opportunity to be present during that second review that Mr. Nussbaum was going to conduct?

Mr. MARKLAND. No.

Mr. GIUFFRA. Now, after the review of the documents was concluded, was there a pile of documents that were going to be given to the Foster family's attorney?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Were those documents shown to the police before they were given to the family attorney?

Mr. MARKLAND. No, they were not. They would be reviewed by the family's attorneys and then later reviewed by detectives from our department.

Mr. GIUFFRA. Did you view this procedure as somewhat unusual?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Why did you think it was unusual?

Mr. MARKLAND. We had no way of knowing what documents were, in fact, going to the family attorney and if the documents we were able to review at a later date were, in fact, the documents that came out of that office that day. We had no control over them whatsoever.

Mr. GIUFFRA. During the course of his review of the contents of Mr. Foster's office, did Mr. Nussbaum examine a briefcase that Mr. Foster owned?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Could you please describe for the Committee what you recall about Mr. Nussbaum's examination of the briefcase that was contained in Mr. Foster's office?

Mr. MARKLAND. As with other areas of the office, Mr. Nussbaum took articles out of the briefcase. He briefly described them and put them into the various piles he had established on the desk. When

Mr. Nussbaum concluded the emptying of the briefcase, he looked in it, said that's it; it's empty. He again looked at it, actually picked it up and looked into the briefcase, set it down on the floor, and it was pushed to the wall behind him.

Mr. GIUFFRA. So your testimony is that Mr. Nussbaum looked into the briefcase and said it was empty twice?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. It would also be your testimony that as best you can tell, he looked down in the bottom of the briefcase after he had removed the files from the briefcase?

Mr. MARKLAND. Yes. He had a clear view of the briefcase on the floor, so that he had it spread open with both hands and was looking down into the briefcase, yes.

The CHAIRMAN. This is after he took the files out?

Mr. MARKLAND. Yes, sir.

Mr. GIUFFRA. Were two Associate Counsel to the President present during this review process, Mr. Sloan and Mr. Neuwirth?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Do you believe that they were standing in a position where they could have looked into the bottom of the briefcase?

Mr. MARKLAND. I believe they both had the opportunity, yes.

Mr. GIUFFRA. Now, did anyone on July 22nd indicate to you that there were scraps of paper in the bottom of Mr. Foster's briefcase?

Mr. MARKLAND. No. Mr. Nussbaum indicated that the briefcase was, in fact, empty.

Mr. GIUFFRA. No one mentioned, for example, yellow stickies, something we heard about this morning?

Mr. MARKLAND. No.

Mr. GIUFFRA. Had you been advised by someone at the White House that there were scraps of yellow paper in the bottom of the briefcase, what action would you have taken?

Mr. MARKLAND. I would have requested that they be examined.

Mr. GIUFFRA. You would have looked at the briefcase and wanted to see what those scraps of paper were about; am I correct?

Mr. MARKLAND. I would not have been allowed to look at them, but I would have requested that they be looked at.

Mr. GIUFFRA. Do you recall any discussion of a burn bag during this review process?

Mr. MARKLAND. No, I don't.

Mr. GIUFFRA. Now, you're aware, sir, that at some point several days later, the White House reported that it discovered scraps of paper in the bottom of Mr. Foster's briefcase; am I correct?

Mr. MARKLAND. Yes.

Mr. GIUFFRA. Do you know when the Park Police were advised of the existence of these scraps of paper? Was it a day later?

Mr. MARKLAND. It was close to a week later, I believe. I'm not sure of the exact date. It's reflected in my reports.

Mr. GIUFFRA. The week after the 22nd review?

Mr. MARKLAND. I believe so.

Mr. GIUFFRA. Following the discovery of the scraps of paper in Mr. Foster's briefcase, did you interview Mr. Nussbaum?

Mr. MARKLAND. Yes, I did.

Mr. GIUFFRA. What did Mr. Nussbaum say to you about his failure to find the scraps when he looked into the briefcase on July 22nd?

Mr. MARKLAND. He simply said that he didn't see them.

Mr. GIUFFRA. Now, based on your observation of Mr. Nussbaum's examination of the briefcase, was it possible for Mr. Nussbaum to have missed seeing the scraps of paper at the bottom of the briefcase?

Mr. MARKLAND. I believe there were only two possibilities, logically. Either the scraps of paper were not in the briefcase at the time he examined it in Mr. Foster's office when I was present, or they were in the bottom. If they were in the bottom, he would have seen them.

Mr. GIUFFRA. Captain Hume, do you have a top secret security clearance, or did you have one at one time?

Mr. HUME. Yes, I did.

Mr. GIUFFRA. Do you know whether you had one on July 20, 1993?

Mr. HUME. I'm not positive, but I believe I did. I've never been debriefed, and I would assume I still have that.

Mr. GIUFFRA. Do you know whether other Park Police officers have top secret security clearances?

Mr. HUME. I believe some of them do, yes.

Mr. GIUFFRA. Now, on the morning of July 21st, were White House officials aware that you would be coming to the White House?

Mr. HUME. On the morning of the 21st?

Mr. GIUFFRA. Yes.

Mr. HUME. That's correct. Detective Markland had made those arrangements.

Mr. GIUFFRA. So your appearance at the White House on the morning of the 21st was not a surprise to people at the White House?

Mr. HUME. At least not to the Secret Service. I believe that's who Detective Markland had spoken with.

Mr. GIUFFRA. You had been cleared through security at the White House?

Mr. HUME. Right. We made those arrangements to meet, I believe, the senior official on duty at the White House.

Mr. GIUFFRA. You expected on the 21st to be able to look at the contents of Mr. Foster's office; am I correct?

Mr. HUME. That's correct.

Mr. GIUFFRA. Did there come a time on July 21st when you contacted Chief Langston?

Mr. HUME. Yes, in the afternoon of the 21st was the first contact that I had other than when I saw him at the White House. But as far as the concerns that we had, not being able to accomplish the mission that we went to the White House for, that didn't occur until later on that afternoon.

Mr. GIUFFRA. When you say that you were not being able to accomplish the mission, that would be to review the documents in the office and interview the witnesses?

Mr. HUME. That was primarily the primary mission that we were there to accomplish, those two things.

Mr. GIUFFRA. You wanted to report back to the Chief that the mission had not been accomplished?

Mr. HUME. It was an objection or a complaint that we were not able to do what we had gone up there to do.

Mr. GIUFFRA. Did White House officials indicate to you why you were not able to accomplish the mission that you had set out to do on the morning of July 21st?

Mr. HUME. Not really. What I recall and what Mr. Nussbaum told us when we had seen him that morning in the West Wing was that once the Justice Department got there we would be able to get into the office. I was a little confused as to how that was supposed to be put into motion, so, based on what Major Hines had told me earlier when I had seen him at the White House, he said that we would be able to get into the office once the FBI arrived. I believe I called the FBI, then later on that afternoon we met with the FBI at the senior Secret Service official's office that represented the security at the White House, and we still had not been able to accomplish what we went there for. That's when I called Chief Langston and spoke with him.

Mr. GIUFFRA. Did you ever speak to Deputy Attorney General Philip Heymann on July 21st?

Mr. HUME. Yes, I did.

Mr. GIUFFRA. What did Deputy Attorney General Heymann advise you with regard to the procedure that would be used to review the documents in Mr. Foster's office?

Mr. HUME. Actually, we spoke twice that day, but to sum up the crux of that conversation, he advised that he would be sending over two career Justice Department attorneys who would accompany us and would review those documents, look at them from an investigatory point of interest and, at first, I assumed after they had determined that there was some investigatory interest in those documents, then we, the police, would be allowed to look at them. But on further discussion with Mr. Heymann, I determined that wasn't what was going to happen. Actually, they would look at them and make that determination.

Mr. GIUFFRA. Did you prepare a report on the review that occurred of the documents in Mr. Foster's office on July 22nd?

Mr. HUME. Yes, I did.

Mr. GIUFFRA. If we could have the report put up on the screen? It's pages 36 and 37.

The CHAIRMAN. Would you make a copy available to Captain Hume as well. Can you get it down to him? I think it would be a good idea that whenever we refer to a document, in addition to putting it up here, if we could possibly get it down to the witness as well. I mention this to staff on both sides. Go ahead, Mr. Giuffra.

Mr. GIUFFRA. Captain Hume, if I could direct your attention to the first page of the report. If you could read the second sentence beginning with "the very limited examination."

Mr. HUME. "The very limited examination of the documents and notes were done by the Chief Counsel, Bernard Nussbaum. The following people were also present during this"——

Mr. GIUFFRA. Sir, do you believe it was a very limited review or examination that Mr. Nussbaum conducted?

Mr. HUME. That's my opinion; that's correct.

Mr. GIUFFRA. If we could turn to the next page of your report about the review that Mr. Nussbaum conducted. You indicate in the third sentence, "Bernard Nussbaum did the actual review of the documents in a very hurried and casual fashion." Do you still believe that's how Mr. Nussbaum did his review?

Mr. HUME. That's my opinion. That's my feeling, yes.

Mr. GIUFFRA. Then, later in your report, you indicate that at no point was anyone from the Park Police allowed to examine any of the documents; and that's correct, isn't it?

Mr. HUME. Yes.

Mr. GIUFFRA. Now, the police were not allowed to search Mr. Foster's briefcase; is that correct?

Mr. HUME. On the 22nd, that's correct.

Mr. GIUFFRA. Do you believe, had you been given an opportunity to search the briefcase on the 22nd, that you would have found the scraps of paper, had they been in the bottom of the briefcase?

Mr. HUME. I have absolutely no doubt I would have found the scraps of paper in that briefcase.

Mr. GIUFFRA. What do you, sir, recall about Mr. Nussbaum's examination of the briefcase?

Mr. HUME. I make reference to the fact that he had contact with that briefcase three times. The first time I wasn't real sure. He had brought up some papers from the floor. He had leaned over behind the desk. I couldn't see where he was getting these papers from. I looked over at Detective Markland, who was seated on a sofa adjacent to a folding chair that I was seated in, and he said something to the effect that don't worry, Charlie, I can see where he's getting those papers from.

Eventually, I could see that briefcase, and that's when he picked it up, and that's what I called his second contact. The first contact had been when he brought papers up out of it and put them on the desk, and he went through those and he sorted them out. The second contact was when he picked it up, and I seem to think he held it there, and he's talking while he's holding it. He looked at it, looked in it. I mean, I don't know from where I was seated, my perspective and my recollection of it, but that was what I considered the second contact with that briefcase.

The third contact was when he picked it up and he moved it back. There was a wall right behind the desk, and he moved that briefcase back behind that wall, which indicated to me that he was finished with it, that all the documents had been removed from that briefcase. I don't recall the conversation that Detective Markland testified to.

Mr. GIUFFRA. Chief Langston, I have several questions for you and then I will be concluded. Am I correct that certain members of the Park Police have top secret security clearances?

Mr. LANGSTON. All captains and above and those investigators or officials that need to have it, yes, sir.

Mr. GIUFFRA. Did you attend a briefing for White House officials on the morning after Mr. Foster's death, which would be July 21, 1993?

Mr. LANGSTON. Yes, sir, I did.

Mr. GIUFFRA. At that briefing, did White House officials promise to cooperate with the Park Police's investigation into Mr. Foster's death?

Mr. LANGSTON. Yes, sir, they did.

Mr. GIUFFRA. Did White House officials say that they wanted the investigation handled in a routine manner?

Mr. LANGSTON. Mr. Stephanopoulos made that statement, that this should be handled as routine as we would normally do.

Mr. GIUFFRA. You are referring to Presidential Aide George Stephanopoulos?

Mr. LANGSTON. That's correct.

Mr. GIUFFRA. Did anyone indicate to you that Park Police officials would not be given an opportunity to review the documents in Mr. Foster's office at that briefing on the morning of July 21st?

Mr. LANGSTON. No, sir.

Mr. GIUFFRA. Now, did there come a time on July 21st when you received a phone call from Captain Hume, which he's already testified to? What do you recall about that conversation?

Mr. LANGSTON. I understood that there was some problems with the access to the office, access to the documents that they were seeking, and he was very disturbed about it.

Mr. GIUFFRA. Did you take any action in response to Captain Hume's phone call?

Mr. LANGSTON. Yes, I did.

Mr. GIUFFRA. What did you do, sir?

Mr. LANGSTON. There were an awful lot of phone calls that were made that day. Probably 40—it seemed like 40—phone calls were made during that entire day. One conversation I had was at a later briefing that morning with Tom Collier, who said if there was any problems with the——

Mr. GIUFFRA. Who is Tom Collier?

Mr. LANGSTON. At that time he was Chief of Staff for the Department of Interior.

Mr. GIUFFRA. Was it unusual for you to be talking to Mr. Collier about an ongoing investigation?

Mr. LANGSTON. On highly sensitive investigations. We've had a couple of them that he wanted to be kept abreast of, and it's unusual, but it wasn't the first time. He said if we had any problems with members of the staff, that he knew many of the members of the staff and that he would attempt to resolve those.

Mr. GIUFFRA. Mr. Chairman, I see that my time is up, and I'm concluded with my examination.

The CHAIRMAN. So given the nature of the circumstances and the high profile of this whole situation, I just want to conclude, it certainly wasn't unusual to reach out to Mr. Collier, is that correct?

Mr. LANGSTON. No, sir, it was not unusual.

The CHAIRMAN. I mean, it's understandable?

Mr. LANGSTON. It is, yes, sir.

The CHAIRMAN. I wanted to put it in its proper context. Fine.

Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes. Good afternoon, Chief Langston, Sergeant Markland, Captain Hume. Let me start

first with you, Sergeant Markland. Your experience in Federal service started with employment by the Uniformed Division of the Secret Service; is that correct?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. That means the people who are assigned, among other things, to guard the White House?

Mr. MARKLAND. That's correct.

Mr. BEN-VENISTE. They have other functions throughout this city?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. You were assigned to the White House at the very beginning of your career with the Uniformed Division of the Secret Service?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. Is it correct that you were unhappy with that selection that you had made in terms of that branch of the service? You wanted to get out, didn't you?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. Pretty soon after you got in?

Mr. MARKLAND. Shortly under 2 years.

Mr. BEN-VENISTE. The reason why you wanted to get out was that you thought that the job was too passive?

Mr. MARKLAND. The reason was that it wasn't exactly the job that was described to me when I was recruited for it.

Mr. BEN-VENISTE. There was a lot of standing around and guarding of doors?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. It was not something that you were particularly interested in doing. You wanted to be more actively involved in law enforcement?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. As a matter of fact, you felt that sometimes the people who were working with the Uniformed Division of the Secret Service were somewhat paranoid; they were dreaming up things to do?

Mr. MARKLAND. I don't understand what you mean by "things to do."

Mr. BEN-VENISTE. Have you had a chance to look over your deposition, Sergeant?

Mr. MARKLAND. I haven't had a chance——

Mr. BEN-VENISTE. Do you have it in front of you?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Let me draw your attention to page 318, at line 14. Do you see where the question is asked:

Question: Going back to your own experience, there wasn't a heck of a lot to do in that job, was there?

Answer: No, and sometimes those guys get very paranoid, thinking of things they could do.

Does that refresh your recollection?

Mr. MARKLAND. I believe I made that statement.

Mr. BEN-VENISTE. Now, you are now in what division of the Park Police?

Mr. MARKLAND. Special Forces branch.

Mr. BEN-VENISTE. Commonly known as SWAT?

Mr. MARKLAND. No. SWAT is a part of the Special Forces branch. I have a team, a SWAT team.

Mr. BEN-VENISTE. Is there any more activist branch that you know of?

Mr. MARKLAND. I'm sorry?

Mr. BEN-VENISTE. Is there any more activist branch of the Park Police than the division that you're in now?

Mr. MARKLAND. There are varied divisions of the Park Police that are just as active in their own ways. I spent a good deal of my time in Narcotics Vice and a little over 2 years on a task force with the Drug Enforcement Administration. I participated in Operations Division, Crime and Violence Task Force with the Metropolitan Police Department.

Mr. BEN-VENISTE. So in the SWAT team you're involved in controlling situations, executing search warrants and assisting in situations that could be explosive?

Mr. MARKLAND. We train for that, yes.

Mr. BEN-VENISTE. In your experience prior to July 1993, you were involved in narcotics, executing search warrants and working cases?

Mr. MARKLAND. Up until 1993?

Mr. BEN-VENISTE. Yes. Hadn't you had that kind of experience?

Mr. MARKLAND. I've had that kind of experience.

Mr. BEN-VENISTE. You enjoyed that?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Is it fair to say from your police training you are trained, essentially, when you're faced with a situation, to maintain control, to take and maintain control of the situation?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Prior to being assigned on July 21st to the Foster matter, you had been involved in two suicide investigations where you took an activist role and three homicides, according to your deposition transcript. Is that accurate?

Mr. MARKLAND. I was involved in three homicide investigations that I can think of, two of those being with another department, so I was on a periphery of those. I've been involved in suicide investigations, but I don't think I was ever assigned one.

Mr. BEN-VENISTE. So you were never assigned as a principal or second officer on a suicide investigation, and you were on the periphery of three homicide investigations?

Mr. MARKLAND. I was actively involved in three other homicide investigations.

Mr. BEN-VENISTE. You have not been actively involved in any suicides?

Mr. MARKLAND. No.

Mr. BEN-VENISTE. The reason why you were assigned on the 21st to the Foster matter was what?

Mr. MARKLAND. I believe I was the only one with any familiarity with the White House, and I was probably the only detective coming in at 6 a.m. that morning.

Mr. BEN-VENISTE. You were the only detective available that morning?

Mr. MARKLAND. I believe so.

Mr. BEN-VENISTE. You were assigned to the case by Captain Hume; correct?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. What time did you arrive at the White House?

Mr. MARKLAND. That's very sketchy in my mind. I thought it was anywhere from 9 to 11 a.m.

Mr. BEN-VENISTE. So you have no clear recollection, but it is clear to you that you were waiting around to do something?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. What you had in mind that you were going to do was to interview witnesses and go through Mr. Foster's office to look for a suicide note or related material?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. Now, who did you get this information from as to what you were going to do?

Mr. MARKLAND. That would be the normal course of events. I was under the impression that Captain Hume had conversations with White House personnel.

Mr. BEN-VENISTE. You were under the impression that Captain Hume had made the arrangements?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Captain Hume, you were under the impression that Sergeant Markland had made the arrangements?

Mr. HUME. It wasn't an impression. I believe I said that Detective Markland—hopefully, I did—did make those arrangements with the inspector up there, Dennis Martin, to facilitate our ease in getting into the White House and doing what we needed to do.

Mr. BEN-VENISTE. That's getting onto the grounds?

Mr. HUME. Right.

Mr. BEN-VENISTE. Now, in terms of getting the understanding that you were going to interview witnesses on the 21st and go through Mr. Foster's office to look for the suicide note, Detective Markland did not make those arrangements; is that correct, Detective?

Mr. MARKLAND. That's correct.

Mr. BEN-VENISTE. You did not make those arrangements?

Mr. HUME. Hopefully, I didn't say that, sir.

Mr. BEN-VENISTE. So neither of you had actually spoken to any White House people to make those arrangements?

Mr. HUME. That's correct. I had not.

Mr. BEN-VENISTE. So that was just a misunderstanding if anyone thought those arrangements had been made with White House personnel while you were waiting there that morning?

Mr. HUME. You've got to take this thing one step at a time. I wanted to get on the White House grounds first.

Mr. BEN-VENISTE. I understand.

Mr. HUME. We had to do that through the Secret Service because of the security procedure, and that's what I was making reference to, that I had Detective Markland make.

Mr. BEN-VENISTE. But if I understand correctly, neither of you had made arrangements with any White House personnel to either interview witnesses or to go through the office; is that correct, sir?

Mr. HUME. That's correct. My point is that——

Mr. BEN-VENISTE. Is that correct, Sergeant?

Mr. MARKLAND. Mr. Ben-Veniste, no matter what our impressions were before we got to the White House, what we were there for after we got to the White House was clear to everyone.

Mr. BEN-VENISTE. I understand. I'm just starting with the starting point, the understanding. You assumed that arrangements had been made so that you could search the office, and what I think we've established is that those arrangements had not been made as of the time you showed up.

Now, let's take it a step further. Did you make the assumption that you had the right to enter the office?

Mr. MARKLAND. If I was under that impression, then we would have secured the office and applied for a warrant. We were not under the assumption that we had the absolute right to enter the office.

Mr. BEN-VENISTE. So you were not under any assumption that you had the right to enter the office. Were you under any assumption that you had the right to enter the office, Captain Hume?

Mr. HUME. No, I wasn't. That's why I made the request that they seal it.

Mr. BEN-VENISTE. Now, Sergeant Markland, it is correct, is it not, as of July 22, 1993, when it came time to, with this assembled group of people, look for the suicide note under the procedures that Mr. Nussbaum laid down, you were by that time angry about a number of things that had occurred or had not occurred; is that correct?

Mr. MARKLAND. I was quite disturbed, yes, sir.

Mr. BEN-VENISTE. The first thing that made you angry is that you saw Chief Langston and Major Hines had briefed the White House higher staff on July 21, 1993. Is that so?

Mr. MARKLAND. That fact didn't. I believe I related to you in a deposition that I had no idea—the information of what the Chief was doing and Major Hines was doing at the White House that morning was not given to me.

Mr. BEN-VENISTE. You were angry about something that happened associated with the briefing that took place on the 21st; correct?

Mr. MARKLAND. I was disturbed that I wasn't given the information of what was going on in the investigation I was involved in.

Mr. BEN-VENISTE. You weren't disturbed at Mr. Nussbaum or the White House. It wasn't their fault that you weren't given whatever information you thought you should have about the briefing; correct?

Mr. MARKLAND. That's correct.

Mr. BEN-VENISTE. You were angry, according to your testimony, because you assumed that your Chief and Major Hines were showing investigative reports to White House personnel. Is that so?

Mr. MARKLAND. I was disturbed because I did not know what was happening at that point.

Mr. BEN-VENISTE. But this is one of the things you had said disturbed you and contributed to the fact that you became very angry. Isn't that so?

Mr. MARKLAND. I'm not sure I understand the question. I don't believe I ever said that the Chief gave reports to the White House.

I believe I related I had no idea that he would even be there or what was going on at that point.

Mr. BEN-VENISTE. You saw Chief Langston there, and you saw Major Hines there?

Mr. MARKLAND. That's correct.

Mr. BEN-VENISTE. At page 332 of the transcript of your deposition, you testified as follows:

Question: You knew that he was at the location of the White House—referring to Chief Langston. Obviously you saw him there, and that he had what you believed to be these reports in his possession, and you made the logical jump that he had possibly shown his reports to others outside of the Park Police, and that was upsetting you?

Answer: I believe there's a strong possibility that he may have, and it did upset me.

Mr. MARKLAND. Using the terms "possibility" and "may have" do not——

Mr. BEN-VENISTE. You said it upset you?

Mr. MARKLAND. Sir, my deposition ends with page 319.

Mr. BEN-VENISTE. Your deposition goes beyond that, sir.

The CHAIRMAN. No. What he's saying is in this particular transcript, because my volume ends at page 319 as well. Let's see if we can't get Sergeant Markland the rest of the deposition. Does anybody have another copy so we can show the officer? Wonderful. If anybody could spare a copy, I'd like to a look at it. OK. I've got a copy. Thank you. We're on page 332, Richard?

Mr. BEN-VENISTE. Are you with me now on page 332? You can even go back to page 331, line 17:

Question: You made the assumption that he had shown those reports to persons outside of the Park Police at the White House, and that was upsetting to you?

Answer: I believe there was a strong possibility. I don't know if he had or had not, but yes, it did bother me.

Mr. MARKLAND. Correct. I don't know if he had or had not and yes, it did bother me.

Mr. BEN-VENISTE. You made an assumption, and that assumption was bothering you on the morning of the 21st. Did you ever ask Chief Langston whether, in fact, he had disclosed the Park Police reports to White House staff?

Mr. MARKLAND. No, sir. I asked Captain Hume if he could let me know what was happening at that point.

Mr. BEN-VENISTE. Did you learn whether there were any unauthorized or inappropriate, in your view, disclosures by your Chief during this briefing?

Mr. MARKLAND. I learned later on that there was not.

Mr. BEN-VENISTE. But this was one of the things that upset you and, as it turned out, there wasn't a good basis for it; right? There wasn't a basis for it because what you had presumed to have happened didn't happen?

Mr. MARKLAND. I still believe there was a basis——

The CHAIRMAN. Mr. Ben-Veniste, I don't want to do this, but this is not a trial, and if you look at his words, he said "I believe there was a strong possibility. I don't know if he had or had not." He said that it bothered him, he didn't say he made an assumption. I think when we begin doing that—none of us should really do that, and I'm going to give you latitude obviously, but I just think we've gone over this three or four times now, and the record is quite clear. He

was upset at the possibility, obviously, that this took place. Later on, as we go down, he went through it. He learned that it hadn't taken place.

Mr. BEN-VENISTE. No, he didn't.

Senator SARBANES. He repeated——

Mr. BEN-VENISTE. He repeats it.

The CHAIRMAN. But as he learns later on in the deposition——

Mr. BEN-VENISTE. No, he doesn't, most respectfully, Mr. Chairman. But let's go to the next thing that was bothering you that morning——

The CHAIRMAN. He says he learns from the Chief's office——

Mr. BEN-VENISTE. —you were angry and frustrated about waiting around and not being able to do anything.

The CHAIRMAN. Excuse me, Richard. Go ahead.

Mr. BEN-VENISTE. The second thing that made you angry and frustrated is that you were waiting around, and you didn't get into the Counsel's Office; correct?

Mr. MARKLAND. That also disturbed me, yes.

Mr. BEN-VENISTE. We've gone over the fact that no one had actually made arrangements to get into the office, and then later you learned from Mr. Nussbaum that he had asked the Department of Justice to coordinate, and that senior people from the Justice Department were coming over, and those people didn't get there until about 5 p.m. Is that so, Captain Hume?

Mr. HUME. That's correct. Perhaps even a little after 5 p.m. I believe I spoke to Mr. Heymann at 4:26 p.m. and again at 5 p.m., so based on that, I would think it would be somewhere around 5 p.m. or a little after.

Mr. BEN-VENISTE. By that time, it was already decided that it was too late in the day and that you would start again the next day?

Mr. HUME. I believe that was decided after there was a meeting in Mr. Nussbaum's office with the two Justice Department attorneys.

Mr. BEN-VENISTE. Now, in terms of the mechanics and logistics of who made what arrangements and with whom, you recognize, Sergeant Markland, do you not, that you could have made better arrangements on your side and had more concrete procedures? You realized that in hindsight, did you not?

Mr. MARKLAND. Given this first-time experience with dealing with the White House, I think I'd do better the next time, yes, sir.

Mr. BEN-VENISTE. You recognized that, had you made these arrangements in advance, that would have been a better way of proceeding, rather than sitting there and getting steamed about it? I refer you to page 338 of your transcript. Is it fair to say that you came to that realization in hindsight? Do you see that at line 15?

Mr. MARKLAND. Yes——

Mr. BEN-VENISTE. You say yes?

Mr. MARKLAND. It states in another way what I just said, given that first-time experience with the investigation of an incident at the White House, we would do better the next time.

Mr. BEN-VENISTE. You said:

Yes, there should have been some better arrangements, I think, made on our end. We should have gotten some very concrete procedures we had to follow before we

went over there. And at the same time, I think we may well have accomplished some of our purposes without disrupting the White House while we were there and at least been able to interview some of the workers.

That was your answer; correct?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Another thing that got you upset, you say, is that the office, in your view, had not been sealed, and it was your assumption that a request had been made to "seal" the office; is that correct?

Mr. MARKLAND. Sealed or secured, yes.

Mr. BEN-VENISTE. In fact, where did you—strike that.

In fact, you claim to have received the information about the request being made to seal the office from Captain Hume. Isn't that so?

Mr. MARKLAND. I know I had the information that morning. I thought it was, to the best of my recollection, from Captain Hume.

Mr. BEN-VENISTE. You so testified at page 81 of your deposition; correct?

While Sergeant Markland is looking for that reference, Captain Hume, you had the occasion on the morning of the 21st before you went to the White House to talk with Investigators Braun and Rolla, did you not?

Mr. HUME. Just in passing.

Mr. BEN-VENISTE. You did not get a full formal briefing?

Mr. HUME. Absolutely not. I had several other matters that were pressing also.

Mr. BEN-VENISTE. But you asked Investigator Braun and Investigator Rolla to fill you in on the essential details of what had occurred the night before?

Mr. HUME. To the best of my recollection, perhaps. I believe there was a sergeant there in the office and there were four or five other investigators, including Investigator Rolla and Investigator Braun, and we just went over a few things, through a few questions like did you do this? Did you do that? Based on that, that's where I made the determination there were some things we had to do that day, and the sergeant handled some of those assignments and I handled the rest of those assignments.

Mr. BEN-VENISTE. With respect to your conversations with Investigators Braun and Rolla, it is correct, sir, is it not, that you did not learn from them that they had made any request of anyone to lock or secure the office?

Mr. HUME. Right. The first time that I had learned that they had made that request was at the hearings last summer.

Mr. BEN-VENISTE. So, in essence, Sergeant Markland thinks he heard it from you and you know that you didn't hear it from Braun and Rolla?

Mr. HUME. Not to my recollection, sir. When I went to the West Wing of the White House, I thought I was onto a novel idea when I asked the detective to write in his notebook that at 11:20 we made the request. I thought that was the first request. Otherwise, I don't think I would have made a big point of that.

Mr. BEN-VENISTE. So you have a very clear recollection when you were at the White House and you made the request that the office be secured and you were told that's already been done, Captain,

that you had had no information from Braun or Rolla that they had made any prior requests?

Mr. HUME. Not that I recall. Inspector Martin had come back to us. I thought he had gone to make a phone call to check with someone, and he came back and indicated that the office had already been—I don't know if he said sealed or posted, but I've been using the term sealed.

Mr. BEN-VENISTE. Yet, Sergeant Markland, you felt very strongly, you were mad and disgusted, I think was your testimony, that nothing had been accomplished to lock or secure the office; isn't that so? I'll refer you to page 160 of your deposition.

Mr. MARKLAND. I believe page 160 does not—"mad and disgusted" does not apply to me finding out that the office was not sealed. I think on page 81, your reference before I replied I was surprised—very surprised to find out that there wasn't——

Mr. BEN-VENISTE. Were you upset that the office wasn't sealed?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Did that contribute to this sense of anger and being upset that you've talked about?

Mr. MARKLAND. Yes, anger that I was wasting my time.

Mr. BEN-VENISTE. Now, let's go on. One of the other things that you didn't like and that made you very angry was the way in which Mr. Nussbaum conducted the search, and you've been very clear about that; correct?

Mr. MARKLAND. That he was even conducting the search.

Mr. BEN-VENISTE. Right. You wanted to have control over that process; correct?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. The fact that you didn't have control over it, again, made you very angry, and I think you used the term "disgusted"; is that correct?

The CHAIRMAN. What page are you referring to?

Mr. MARKLAND. I believe I used that term when you asked me—was that on page 161?

Mr. BEN-VENISTE. Pages 174 and 232. If you could testify from your recollection, perhaps we could go further. Was that another one of the things that made you angry, that Mr. Nussbaum was the one to look at the documents and not you?

Mr. MARKLAND. Of course that upset me, sure.

Mr. BEN-VENISTE. We've established that you didn't have any right to enter the office and at that point that you didn't have any right to look at the documents. Had you any appreciation of the fact that there were privileges involved in these records, in these materials in Mr. Foster's office?

Mr. MARKLAND. That there could have been, yes, but I kept expecting some degree of cooperation after Justice was contacted, and my expectations never panned out.

Mr. BEN-VENISTE. Now, you had never, in any of the suicide investigations that you had been involved in or knew about previously, seen any instance where it was the police who took possession of the office of the deceased, either by way of searching or of sealing such an office, if the suicide did not take place at that location; isn't that so?

Mr. MARKLAND. Early on in any death investigation, before you decide exactly what direction it's going to take, whether it's a homicide or a suicide, you're going to secure areas. You're going to solicit cooperation from people, and then, if you have to, you're going to apply for warrants. You're not going to give up control of something you already have. Of course, this was a unique situation going on in the White House.

Mr. BEN-VENISTE. But you didn't have control, and you didn't have the right to have control. We've established that. Mr. Chairman, if I may later on come back to it, or, if you wish, I can continue now.

The CHAIRMAN. Richard, if you want to pursue it in the interest of continuity, and if you have only a few more minutes, why don't you finish it up.

Mr. BEN-VENISTE. OK. You used the example, did you not, if this was a normal situation—referring to Mr. Foster's office—and if you were in a normal situation, normal investigation, you would have backed your car up to the White House, and you would have put all those files in the trunk of your car, and you would be off and gone with them to look at them at your own speed and at your own pleasure?

Mr. MARKLAND. I did make that statement. I was not totally serious in its content. I was trying to make a point.

Mr. BEN-VENISTE. Indeed, at the deposition, you were talking about your preference as a police officer and wanting to have control over a situation, and you speculated that if Mr. Giuffra had died suddenly and there was an investigation——

The CHAIRMAN. Perish the thought.

Mr. BEN-VENISTE. Perish the thought. That's what I said, exactly, Mr. Chairman. I was saying if one of the leading lights of the Senate staff had tragically come to an end, you said if you had your preference, you would have sealed the Hart Office Building, sealed Mr. Giuffra's home and sealed the last restaurant or food store that he had been to. You would like to be able to do all of these things as a police officer, but surely you recognize that there are limitations on the police; correct?

Mr. MARKLAND. Of course. The point I was trying to make there, Mr. Ben-Veniste, is I would do my best for Mr. Giuffra in that circumstance, and I would do all that I could do.

Mr. BEN-VENISTE. But you recognize that it would be untenable and not feasible to attempt to seal the Hart Office Building or to do all of those other things. Let me just finish with one other point.

I take it you had never been involved in the investigation of the death of an attorney or a psychiatrist or someone who has entrusted to him the confidences of others in the sense that you would recognize, would you not, that because an attorney or psychiatrist dies, this does not permit the police to look through the psychiatrist's files or the lawyer's files and to look through the confidences of people who have entrusted those confidences in a lawyer or a psychiatrist? You recognize that, don't you, as you sit here today?

Mr. MARKLAND. I recognized that before this investigation. However, in that case, I don't believe I would be told come back tomorrow and maybe we can do what you want to do. I would be told

straight up either yes, we'll cooperate with you or no, and this is why.

Mr. BEN-VENISTE. Whatever middle ground Mr. Nussbaum thought he was finding to balance his obligations to protect the privileges and confidences entrusted to him, you did not feel he had gone far enough. That's quite clear.

Mr. MARKLAND. I'm not sure I understand your question.

Mr. BEN-VENISTE. At this point, I think I've exhausted this line of where I'm going.

The CHAIRMAN. OK. I think you have. Let's go to Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman, gentlemen. First, Mr. Markland, I'd just like to continue with what Mr. Ben-Veniste has been saying, but I think the fact that you were upset about the way the investigation was going only shows how serious you were about doing a good job and that you weren't looking for the extremes that have been talked about but maybe only basic cooperation in trying to do an investigation?

Mr. MARKLAND. That's all I wanted, sir.

Senator GRAMS. So that would lead more to your being upset, that you were more upset about wanting to do the job that you thought you were supposed to do?

Mr. MARKLAND. Yes, sir.

Senator GRAMS. I believe all three of the witnesses so far today—and I apologize, I missed a little bit of the early part of the testimony—have either testified or said in their sworn testimonies that they believe Mr. Foster's office was sealed on the night of the 20th. Is that correct? Is that an impression that all of you had, Mr. Langston?

Mr. LANGSTON. Yes, sir.

Senator GRAMS. Mr. Markland?

Mr. MARKLAND. Yes, sir.

Senator GRAMS. Mr. Hume?

Mr. HUME. No, sir, I did not have that until later.

Senator GRAMS. It's important in an investigation like this one to make sure the office is sealed to prevent contamination; is that correct?

Mr. LANGSTON. Yes, sir.

Senator GRAMS. If this wasn't the crime scene, why was it important that the office be considered as an important location? Mr. Markland, I'll start with you.

Mr. MARKLAND. Sir, it would actually be an extension of a crime scene. We had established that he had been at the office the last anyone had seen him. So, of course, we want to backtrack through the events of the last hours of his life in order to satisfactorily conduct an investigation.

Senator GRAMS. Just good police work?

Mr. MARKLAND. Yes, sir.

Senator GRAMS. Mr. Langston?

Mr. LANGSTON. I'd concur with that.

Senator GRAMS. Talking about maybe contaminating the office, could it also be the loss of evidence or maybe even something being introduced into the office that wasn't there originally?

Mr. MARKLAND. Yes, sir. An investigation at that point is, in effect, akin to a scientific experiment, and the more variables you throw into what you already have, the less use it is.

Senator GRAMS. For example, is it possible that the note found on July 26 may not have originally been in the office? It could have been placed there by someone who entered the office on the night of the 20th or maybe later? I think you testified to that possibility by saying with a crime scene that you did not have control of, it leads to the question of things being introduced or removed.

Mr. MARKLAND. Quite possible.

Senator GRAMS. Now, having read your depositions, I can imagine your frustration with the conduct of the investigation by the White House. In fact, Mr. Markland, I'm going to read something from your deposition to state that you were quite disgusted with the investigation and this is from page 196, line 10. I'll just read a couple of these quotes where you said it was absurd.

You said:

It was absurd. We had already lost control over anything in that office, and then we have people who maintain control the whole time, exclusively, over papers that may be important to cur investigation, reviewing all the papers and telling us whether or not they were important to our investigation.

They were telling you whether it was important. You stated:

We might as well have said to them go ahead and give us a call; if you find anything we'll come back.

I'll go on. You were asked:

Question: Were you concerned that Mr. Nussbaum or any of the other people who were working for Mr. Nussbaum might have been keeping evidence from the Park Police?

Answer: I was not under the impression they were keeping evidence concerning the death investigation from us. I believe they were very afraid we were going to find out something unrelated to the death investigation, and I do not believe—and I'm sure we will get into it later—that the torn-up note authored by Mr. Foster was found in the manner that Mr. Nussbaum presented it to us.

Mr. Markland, is this accurate and——

Mr. MARKLAND. Yes, it is.

Senator GRAMS. Mr. Langston?

Mr. LANGSTON. Yes, sir.

Senator GRAMS. Mr. Hume, do you have anything to add?

Mr. HUME. No, sir.

Senator GRAMS. Because of the noncooperation of the White House that I think again——

The CHAIRMAN. Senator, would you yield for a point?

Senator GRAMS. Sure.

The CHAIRMAN. In reading your deposition, the Senator said you did not believe that that was the manner in which the note was found. Senator Grams, would you just read that last part?

Senator GRAMS. OK. It says:

I was not under the impression they were keeping evidence concerning the death investigation from us. I believe they were very afraid we were going to find out something unrelated to the death investigation, and I do not believe—and I'm sure we will get into it later—that the torn-up note authored by Mr. Foster was found in the manner that Mr. Nussbaum presented it to us.

The CHAIRMAN. What was your thought, if any? What led you to make that statement?

Mr. MARKLAND. Observing Mr. Nussbaum go through the briefcase on the 22nd. As I stated, if the note had been in the bottom of that briefcase as he claimed, he would have seen it.

The CHAIRMAN. OK. What is the date of this deposition?

Senator GRAMS. That's June 28.

The CHAIRMAN. June 28th of this——

Senator GRAMS. 1995.

The CHAIRMAN. So you had no way of knowing at the time that any paper was in there; you've only heard subsequently a note was found in this briefcase. What you're now saying is that after that was reported, you had doubts because, given what you observed in terms of Mr. Nussbaum looking in the briefcase, that doesn't make sense; he would have seen that. Is that what you're saying?

Mr. MARKLAND. Yes, and after the note was ultimately turned over to the Park Police, I went back and spoke to Mr. Nussbaum and, in essence, relayed my concerns to him about why he did not see the note in the bottom of the briefcase.

The CHAIRMAN. You did?

Mr. MARKLAND. Yes, sir.

The CHAIRMAN. Have you given any testimony to us about that? Do you recall if anybody deposed you, or is this the first time you're indicating that you had a—so there came a time when it became public that this note was discovered in the briefcase?

Mr. MARKLAND. Yes.

The CHAIRMAN. Thereafter, you approached Mr. Nussbaum; you had a conversation with Mr. Nussbaum?

Mr. MARKLAND. Yes, sir.

The CHAIRMAN. What did you say to him in regard to this and what did he say to you?

Mr. MARKLAND. There is a report on file that I executed. In essence, I asked him how could he have not seen the note in the bottom because I——

The CHAIRMAN. I think you gave some testimony in your deposition on this. Senator Grams, were you going to touch on this or did I preempt you?

Senator GRAMS. No, that's fine. Go ahead.

The CHAIRMAN. What page is that? "In the third paragraph of the report you discuss"—I see. On page 251, down at the very bottom, the question was asked:

Question: In the third paragraph of the report you discuss——

Oh, you had a report in which you did discuss your conversation with Mr. Nussbaum and you gave a deposition. I want you to know for the record I have not read these depositions, nor have I had access to them. One of the reasons is I talk to the media and I don't want inadvertently to tell them something we have not put out. We're going to prevent leaks, too; I've figured out a way to do it.

Then, in the third paragraph, you discussed Mr. Nussbaum's response to the first question:

Question: Was Mr. Nussbaum angry that you were questioning why he didn't find those notes?

So you asked him why he didn't find the note.

The answer was:

Answer: This was a tense conversation. I was accusing him of lying, basically, and he just said well, I didn't see it, and that's all.

Question: Do you believe he was lying?

Answer: Yes. I think it would have been impossible for him to miss that many torn scraps of yellow paper out of a briefcase that he was searching on the 22nd.

Is that still your opinion?

Mr. MARKLAND. Yes, sir.

Senator GRAMS. I wanted to follow up. This was after he held the bag up and said it was empty during the meeting on the 22nd?

Mr. MARKLAND. I saw him look in that briefcase twice, once after he took papers out and said it was empty, and again when he opened it up and looked thoroughly inside it before he put it on the floor, yes.

Senator GRAMS. He didn't say except for some scrap paper or pieces of paper here in the bottom and ignore it?

Mr. MARKLAND. Only that it was empty.

Senator GRAMS. I also wanted to say because of the noncooperation of the White House, you did call Tom Collier at Secretary Babbitt's office. Mr. Hume, you said—and I'm going to quote this from you:

I guess at that point—we had probably made before the assumption that if there was something that someone wanted to cover up and not let the police see, I think we had already come to that conclusion, sir, that it was already removed, probably. People already admitted going into that office. There was no longer a scene or a room containing potential evidence that was going to be beneficial. If there was a smoking gun in there, there was ample time for people to remove that smoking gun had there been one in there.

Is that your statement, Mr. Hume?

Mr. HUME. That's correct. That's my statement.

Senator GRAMS. I think that's the concern a lot of people have and the concern we've been trying to get at.

Mr. HUME. That's the general talk we had in the office among my peers and co-workers; we're paid to be suspicious, and we were suspicious.

Senator GRAMS. Everybody was suspicious?

Mr. HUME. Everybody that I was discussing it with in the office, yes.

Senator GRAMS. In fact, we have heard testimony that no fewer than three White House aides were in Mr. Foster's office the night he died. Any one of them could have removed some piece of paper important to the investigation or, at a later time, put something in the office that wasn't there to begin with; is that correct?

Mr. HUME. I think that was the general feeling, yes.

Senator GRAMS. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Markland, I'm just trying to understand the sequence here. I want to understand this because I think, Mr. Hume, if I'm correct, you were there at the same time, is that accurate?

Mr. HUME. At the White House, that's correct. There were one or two meetings Detective Markland attended that I didn't go to.

Senator KERRY. But were you there during the time that Mr. Nussbaum was searching through the briefcase?

Mr. HUME. Yes, sir, there were 13 of us in that room.

Senator KERRY. Right. During that time you observed, I think if I recall correctly, somewhat differently from what Mr. Markland has just testified to; is that correct?

Mr. HUME. As opposed to the briefcase?

Senator KERRY. Yes.

Mr. HUME. Right. Yes, sir. I didn't have the same type of observation that he had. My seat was in a folding chair that they had to bring in. There were not enough seats in the room. Detective Markland was sitting to my right with the FBI agent on the sofa. When Mr. Nussbaum reached down to get the papers, I couldn't see where he was getting them from and Detective Markland let me know that he had things under control as far as where they were being removed from.

Senator KERRY. Now, you were asked, I think, in your deposition whether or not Mr. Nussbaum actually looked into the briefcase and saw or whether he was just taking the documents out. I think it was your testimony that he was just taking the documents out?

Mr. HUME. That's correct. I testified that there were three—what I call three contacts that he had with that briefcase. Once when he reached down and brought the papers up, put them on the desk, and went through those and put them into three piles, as he was doing with all the documents.

He picked it back up and he held it in his hand, I don't know if it was one or two, I tend to think it may have been both hands. I don't know. I may have said one before, but I know he held it and I know he was talking at the same time he was holding that briefcase. He looked over at it, whether he looked in it, looked at it, I don't know, Senator. All I know is I considered that the second contact he had with that briefcase. Then, at that point, very clearly—and I can see this very clearly—he took it and he set it back against the wall that was behind the desk.

Senator KERRY. The briefcase at that point was "empty"?

Mr. HUME. I made that assumption. I don't remember him saying it was. He could have. I don't recall it.

Senator KERRY. Fair enough. Do you remember, Mr. Markland, at that point you weren't seated directly in front of it, were you, you were pulled away a little bit?

Mr. MARKLAND. I had a line of sight with the briefcase. I was slightly to the right and in front of Mr. Foster's desk where Mr. Nussbaum was seated.

Senator KERRY. Does Mr. Hume's memory comport with yours now about how the sequence went, that Mr. Nussbaum pulled the documents out and then pushed the briefcase over to the wall?

Mr. MARKLAND. After he pulled the documents out, said it was empty, he again looked in it and tilted the briefcase just off the floor back and forth, put it down on the floor and shoved it to the rear wall.

Senator KERRY. Did you look in it at that point? You didn't see whether it was, in fact, empty?

Mr. MARKLAND. No, no, sir.

Senator KERRY. In your testimony in your deposition you didn't say specifically that Mr. Nussbaum gave it a broad inspection, he just looked at it. Didn't he hold it up?

Mr. MARKLAND. I demonstrated this at my deposition, but I'm sure it doesn't translate. He held it down at floor level where I could see right through the opening of the desk and tilted it back and forth in this manner, again indicated that it was empty and slid it to the rear.

Senator KERRY. OK. Now, I gather that the evidence subsequently in this whole episode is that Mr. Neuwirth found these—he turned it upside down completely, and it's his testimony that a couple of pieces fell out only, and then he looked in it and he found underneath the flap, pressed down, the rest of these yellow sheets. Have you heard that or not?

Mr. MARKLAND. Originally, Mr. Neuwirth told me in Mr. Nussbaum's office that they inadvertently fell out while he was packing the briefcase.

Senator KERRY. Correct. But not all of them. A few of the pieces of paper dropped out, and then he looked in it and he found the rest of them. Have you read the note?

Mr. MARKLAND. Yes.

Senator KERRY. Is there anything in that note that strikes you as a note that somebody might have a motive to hide for a week? As a detective, from your police training, is there something in that note that strikes you as a reason that someone might want to hide it for a week or so?

Mr. MARKLAND. To tell you the truth, I haven't seen that note or read a photocopy of it in close to 2 years.

Senator KERRY. You never read the text of it?

Mr. MARKLAND. I have, but it's been close to 2 years since I've read that.

Senator KERRY. At the time, did it strike you that there was anything in the note that somebody would want to hide? Who ultimately turned the note over?

Mr. MARKLAND. Mr. Nussbaum, I believe.

Senator KERRY. So, if he wanted to hide the note, I suppose he could have never turned it over, isn't that accurate?

Mr. MARKLAND. We would not have known of its existence, that's correct.

Senator KERRY. So is there some rationale—I mean, can you help me understand why if he turned the note over 6 days later he wouldn't turn the note over 5 days earlier if he found it? From a police perspective, is there something here that should raise a mystery to this Committee?

Mr. HUME. Senator, could I respond to that?

Senator KERRY. Sure.

Mr. HUME. My understanding is that Janet Reno told him to turn it over to the Park Police, if I remember my detective——

Senator KERRY. It's my understanding that, indeed, they called Justice the minute they found it. They said, look, we found this note, what should we do. The point is, is there anything in the note that strikes you that Mr. Nussbaum, on behalf of the White House, would want to hang on to it? I'm just trying to find this out. I don't know. Maybe there is. If there is, tell me.

Mr. HUME. I'll make an attempt. I guess it was July 30th by the time I was allowed to look at any of those documents that were put over in that pile that may have been of interest to the police. That

was the phone log of the people that called Mr. Foster on the day of his death. From that phone log, we were able to get the phone number for his doctor. We were able to confirm——

Senator KERRY. Phone number from what?

Mr. HUME. For his doctor. I was able to talk to his doctor and confirm that he was ill. Up to that point, we were getting little bits and pieces of information. That was a good solid piece of information. That was 10 days later, and I guess where some of the frustration is—and Detective Markland was not the only one that was frustrated, I was too, of course—is because it took us so many days to get this information. If they would have been a little bit more forthcoming from the beginning, we could have concluded this investigation, I think. I don't know if we would have been here today if we could have wrapped this thing up in 2 or 3 days.

Senator KERRY. Let me say that I couldn't agree with you more. I think if I were in your shoes I would have felt the same frustration. I'm not suggesting to you your frustration isn't legitimate, and I'm not suggesting to you that exercising your sense of jurisdiction going in there that you didn't have a feeling, hey, wait a minute, we're not quite able to fill this out. I accept that. I really do. I'm trying to understand these things just on the basis of common sense and the facts.

I'm also trying to measure it against the rest of the record as we go along, and I'm asking you to help me understand. For instance, let me ask you this question: Did either of you at that time intend to read the files?

Mr. MARKLAND. We were looking for anything unusual that would stand out from the normal——

Senator KERRY. But you didn't go in there, did you, Detective, with the sense that you were going to read every file?

Mr. MARKLAND. No, but by perusing each file it would be apparent what would be——

Senator KERRY. Fair enough. I agree and I think perusal would have been in good order and a lot of this would not be at issue. But you didn't intend to read the substance per se; correct?

Mr. MARKLAND. I had no interest in——

Senator KERRY. So if you had come across a file that said "Whitewater," at that point in time, you had no knowledge of anything to do with Whitewater, did you?

Mr. MARKLAND. It would have meant nothing to me, Senator.

Senator KERRY. Nor did you?

Mr. HUME. I didn't know that term, that's correct.

Senator KERRY. So if you read and perused something and it was all about some real estate something or other, that wouldn't have stood out to you as some great message of why Vince Foster killed himself, would it?

Mr. HUME. Not just that one thing. I think we would have to look at everything.

Senator KERRY. Correct?

Mr. HUME. We took that in the context of other financial problems perhaps he was having. I think we had picked up some other minor information about his personal finances. I think if you added everything together—it's hard to take one isolated incident, Sen-

ator, and sit here and say definitively that that would or would not be helpful in an investigation.

Senator KERRY. What I'm trying to get at, I mean, I think on its face that there was some clumsiness and that you folks clearly ran into what you perceived as a barrier. I don't question that. The question is whether measured against what you would have done and measured against what you did get and your own testimony, there's something here that leads me to conclude that something was being purposefully hidden or not. That's what we're trying to understand.

Now, let me ask you if at this point in time measured against the things you finally were able to learn about Vince Foster and measured against the evidence you finally did get, as difficult as it was, and I understand it was difficult, is it your feeling that you weren't able ultimately to draw a conclusion about this case?

Mr. HUME. We were able to draw a conclusion. My feeling at this point—of course, unless the hearings of this Committee come up with something else—is that there was an attempt—and this may answer the question about the note—to hide the embarrassment of that man's illness, then it was something criminal, from my perspective, of course, and what knowledge that I had of the events at that particular time, July 21st and July 22nd up through probably August 5th when I closed the case and put it to file as a suicide.

Senator KERRY. You may be right. I can't tell you that you're wrong and I think the further testimony and the whole balance here will make that judgment. That's certainly a fair inference for you to draw based on your experience.

Detective, do you want to add to that?

Mr. MARKLAND. No, sir.

Senator KERRY. OK. Thank you.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

In reviewing the deposition of Sergeant Peter Markland, it's fair to say that you were not allowed, in Mr. Nussbaum's presence, to go through the material that ordinarily you would be involved in going through in doing your job in a like situation; is that correct?

Mr. MARKLAND. More often than not you're able to solicit the cooperation of an employer or family to do your job, or you'll be told from the start that no, we're not going to allow——

Senator MURKOWSKI. We're not going to cooperate?

Mr. MARKLAND. That's all.

Senator MURKOWSKI. In this case, they didn't do either one, they didn't tell you they weren't going to cooperate but you couldn't look at random in areas that you wanted to look; right?

Mr. MARKLAND. That's correct. I felt that after some areas were ironed out between attorneys, we would ultimately be able to do our job and that things would be kept in the proper state so that ultimately anything we came across wouldn't be tainted by——

Senator MURKOWSKI. Did you or any of the other Park Police ask to look in the briefcase?

Mr. MARKLAND. Sir, they knew that we wanted to search that office ourselves, supposedly the details, that was all a part of the office search itself, and it was made clear to us that we would not be looking at anything ourselves.

Senator MURKOWSKI. How was it made clear to you?

Mr. MARKLAND. We had the Justice attorneys there with us, and there had been conversations between them and the White House Counsel's Office. We went into the office, were told basically where to sit in the office and then Mr. Nussbaum, as I recall, laid down the procedure for how the room would be searched.

Senator MURKOWSKI. Did you press him for a relaxation or to indicate that that procedure wouldn't allow you to do your job?

Mr. MARKLAND. No, sir, I didn't feel it was our place as police officers at that time given that there were the Justice attorneys involved in those negotiations.

Senator MURKOWSKI. You could see the briefcase from where you were sitting; is that correct?

Mr. MARKLAND. Yes, I could. I could see it as he searched it, yes.

Senator MURKOWSKI. As he searched it, following the questioning of Senator Kerry, I want to make sure he didn't turn it upside down or open it as was done at this hearing by both myself and Senator Kerry?

Mr. MARKLAND. To tell you the truth, I heard about it, but I haven't been watching the hearings.

Senator MURKOWSKI. No, no, when you observed Nussbaum's handling of the briefcase, he took the papers out, I think you said he put them in three piles; is that right?

Mr. MARKLAND. There were three or, I believe, four piles established on the desk, yes.

Senator MURKOWSKI. When he finished taking those three piles out, did he make any statement?

Mr. MARKLAND. He either said "that's it" or "it's empty." I don't recall his exact words.

Senator MURKOWSKI. I think your deposition makes reference to both those words, "that's it, it's empty."

Mr. MARKLAND. He definitely indicated that the briefcase was empty and then again spread the opening wide and looked in it a second time.

Senator MURKOWSKI. He picked up the briefcase with both hands, spread it, tilted it. Did he turn it upside down?

Mr. MARKLAND. No, sir, he tilted it maybe an inch or so off the floor and was looking down into it.

Senator MURKOWSKI. Did he close it when he shoved it to the back of the room?

Mr. MARKLAND. I don't believe so.

Senator MURKOWSKI. You don't believe so. But you're satisfied that Mr. Nussbaum flat out stated the briefcase was empty?

Mr. MARKLAND. Indicated that it was empty.

Senator MURKOWSKI. How many times did he do that?

Mr. MARKLAND. The first time he said that's it. After that he tilted it around, nodded his head or I can't recall exactly what, but he looked in it a second time, examined it closely, did not take anything else out and slid it to the back of the room.

Senator MURKOWSKI. Now, he was accompanied. Mr. Sloan was near him, observed this and Mr.——

Mr. MARKLAND. Neuwirth.

Senator MURKOWSKI. —Neuwirth as well?

Mr. MARKLAND. Yes, sir.

Senator MURKOWSKI. Could they see in the briefcase? Were they close enough? Were they standing or sitting?

Mr. MARKLAND. They were standing on each side of Mr. Nussbaum.

Senator MURKOWSKI. Could they have seen what was in the briefcase, in your opinion, the way Mr. Nussbaum handled it?

Mr. MARKLAND. Absolutely.

Senator MURKOWSKI. When in your presence Mr. Nussbaum completed the review of the papers of the files or the stacks, did he return those papers or files to the briefcase?

Mr. MARKLAND. No, I can say with assuredness that he did not.

Senator MURKOWSKI. So you don't know if he looked in the briefcase again in your presence. When you left that particular scene, the piles were on the table and the briefcase was off in the corner and that was the last time it was addressed in your presence at this meeting?

Mr. MARKLAND. Yes, sir.

Senator MURKOWSKI. How far was Mr. Nussbaum's face from the top of the briefcase, do you recall, when he held it up?

Mr. MARKLAND. It had to be——

Senator MURKOWSKI. Arm's length or——

Mr. MARKLAND. —two feet.

Senator MURKOWSKI. Now, given where Mr. Nussbaum was sitting and the location of the briefcase, had there been a torn-up note in the briefcase in some 27 pieces, do you think it could have been seen readily?

Mr. MARKLAND. Yes, sir, I believe it would have been.

Senator MURKOWSKI. Why do you believe that?

Mr. MARKLAND. He had emptied the briefcase, tilted the briefcase, had it wide open and indicated that there was nothing in it.

Senator MURKOWSKI. I'd like to place on the screen a copy of a document entitled "The Supplemental Criminal Incident Record," and I'd like to give you just a moment to review a copy of this. Are you familiar with it?

Mr. MARKLAND. Yes, sir.

Senator MURKOWSKI. Can you tell us what the document is?

Mr. MARKLAND. It's a record of when I interviewed Stephen Neuwirth on July 29, 1993 concerning the discovery of the ripped-up note.

Senator MURKOWSKI. Do you think that your report, your typed report, reflects the notes you took on the 29th when you interviewed Mr. Nussbaum and Mr. Neuwirth?

Mr. MARKLAND. Yes.

Senator MURKOWSKI. Now, Mr. Neuwirth said that he discovered the note when he was packaging Mr. Foster's personal effects on July 26th. That was 4 days after the meeting in Mr. Nussbaum's office; is that right?

Mr. MARKLAND. Yes.

Senator MURKOWSKI. Now, in the second paragraph it says here that you posed two questions to Nussbaum and Neuwirth regarding the note. Would you read those questions into the record, please?

Mr. MARKLAND. The two questions I asked were:

How could this note have avoided detection during the search of Mr. Foster's office by Mr. Nussbaum and other members of the White House Counsel's Office in our presence on July 22, 1993?

If the note was found on July 26, 1993, why were the police not notified of its existence until approximately 8 p.m. on July 27, 1993?

Senator MURKOWSKI. Then, in the third paragraph of the report, you indicated Mr. Nussbaum essentially said that he removed the materials from the briefcase and since the briefcase remained on the floor, he somehow missed the scraps of paper; is that correct?

Mr. MARKLAND. That was his recollection as he stated it to me.

Senator MURKOWSKI. Now, according to your report, you questioned him regarding this explanation, and I believe it appears in the third paragraph. Do you recollect what you said?

Mr. MARKLAND. The report says:

I informed Mr. Nussbaum that I was seated on the small couch directly across from and facing him and that I had a clear view of the briefcase when he removed its contents. Also that after the contents were removed, I could see that he spread open the briefcase and visually inspected it as if to confirm that it was indeed empty. Mr. Nussbaum did not recall doing what I described.

Senator MURKOWSKI. That was, I assume, a tough time of the questioning. Did Mr. Nussbaum indicate any emotions? Was he angry? Was he matter-of-fact?

Mr. MARKLAND. He was very matter-of-fact. He said he didn't see any scraps in the bottom of the case and he just didn't recall.

Senator MURKOWSKI. Do you believe he wasn't responding truthfully?

Mr. MARKLAND. That's my belief, yes, sir.

Senator MURKOWSKI. For the record, the exhibition of the briefcase showed clearly in the pictures that were taken the existence of the scraps of yellow paper that were put in, I think, 27 scraps. So, for whatever it's worth, clearly it wasn't hard to see.

Senator KERRY. Mr. Chairman, if I could just make a point here. I don't know what the situation was that night. I'm not speaking up to protect one person or another. I would just like to get the facts and the truth, but you can't assert that the record is improved by a photograph taken at our hearing of a Senator holding a briefcase up in a fashion that no testimony suggests it was ever held up in this room. I don't know how the record is improved, clarified or aided one iota by that.

Senator MURKOWSKI. If I could respond because I think my time is up, I think it's not a Senator, it's Senators. In both cases it was clearly evident that the film footage showed scraps of paper that had been put in the briefcase by myself.

Senator KERRY. Senator, that's——

Senator GRAMS. The fact that that was seen is simply that fact and nothing more.

The CHAIRMAN. I think——

Senator KERRY. But, Senator, the fact is that you put it there, not Vince Foster. In the evidence before us, from all the deposi-

tions, there's nothing to suggest other than the fact that Steve Neuwirth found it clumped up underneath the flap. Now, you didn't put it in there clumped up underneath the flap. You put it——

Senator MURKOWSKI. Senator, if we were to bring the briefcase back in here and examine the so-called flap, you would find that the briefcase didn't have any hidden compartments or flaps as such that would inhibit the visual observation of whatever was in the briefcase relative to the note.

Senator KERRY. I beg to differ with the Senator. If you are looking at a briefcase from over here——

Senator MURKOWSKI. I think factual information will dictate that that is the case because you held up the briefcase and in the photographs, the scraps of paper were seen as well as during the time I held the briefcase up.

Senator KERRY. The reason for that——

Senator MURKOWSKI. It simply points out that these scraps of paper are visible.

Senator KERRY. The reason for——

The CHAIRMAN. Now wait. Please. Senator Murkowski made an observation. I think it's fair to assume that he's not saying that Vince Foster put those 27 pieces in the briefcase. The Senator only placed the scraps of paper in the briefcase to try to determine how visible they would be and also demonstrate that they seemed very visible.

Senator Kerry, at that same time, indicated that there had to be some question as it related to whether this was a fair and accurate representation of a situation that we did not have actual knowledge of because maybe they would have been clumped up and not nearly as visible. I think we're not going to resolve that. That's going to remain out there.

There is other testimony from other people that we have to be concerned with and we'll have to make our judgments based upon that information, but reasonable people may suggest that it's improbable to believe, given the briefcase, et cetera, and the 27 pieces. Others may say wait a minute, it could be that there was a certain situation that would make it difficult, if not impossible, to direct. So I think we're going to leave that there. I've summarized both positions.

I've tried to be fair as it relates to that. Now we have to deal with the factual situations as it relates to what was heard, as it relates to possible observations. What was the position of the various people who did come into contact with it? I think, without attempting to summarize, there has been some testimony that gives concern to all of the Members of this Committee as it relates to the question of was there an observation by other people with regard to there being yellow pieces of paper in the briefcase. I'm going to leave it there.

I don't think we should rush to judgment. This is why Mr. Markland is here. Certainly we should continue this, but I don't think I want to get into that discussion anymore. We are now back on your side, Senator Sarbanes.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Senator SARBANES. I'm going to yield to——

Senator MURKOWSKI. Let me make just one final——

Senator SARBANES. No, let me——

The CHAIRMAN. I think both of our colleagues have made their point without undue rancor, but I don't want it to go back and forth. I think you made your point, Senator, but in the interest of fairness, if you feel compelled, go ahead.

Senator MURKOWSKI. I feel that when I brought the issue up and showed the briefcase and the material in it and then I left the hearing and Senator Kerry chose to bring the briefcase up with the material in it, and to suggest anything more than what I was prepared to do, which was to simply show the briefcase and the material in it to show that it's visible, I think is factual enough.

It doesn't imply anything more than that. It simply means that 27 pieces of paper are visible.

If I can depart from Senatorial courtesy, John, don't tell me it's raining when you're peeing in my tracks. That's just how I feel about the way this was handled and I wanted to make that statement.

Senator SARBANES. Mr. Chairman, I think the important thing here is that neither of these witnesses, Mr. Markland or Mr. Hume, has come anywhere close to testifying that the way Nussbaum handled that briefcase on that day in his office remotely approximated the way the briefcase was handled in this hearing room by the two Senators.

Senator Murkowski. I would agree.

Senator SARBANES. Neither of them has said that Nussbaum held the thing up this way, the way you did and the way Senator Kerry did. So it's a complete departure from their testimony as to how this briefcase was handled that day in terms of how it was demonstrated here in the Committee room.

The CHAIRMAN. The fact of the matter is that many people have testified on the handling of the briefcase. We will ask staff to prepare a memo summarizing all this testimony to date. For example, I think young Mr. Spafford's, the lawyer for the Fosters, recollection is very similar to the testimony Mr. Markland on the search of the briefcase.

Let's look at it. No one is suggesting that we should make a finding on the basis that one Senator believes it would be difficult not to see 27 pieces of paper. I think that was the point, but I think we're digressing now.

Senator, go ahead.

Senator KERRY. I think it's a very important point just to complete the circle here.

The CHAIRMAN. Sure.

Senator KERRY. None of us, yet, have had a full explanation nor even have enough certainty as to where each person was standing or what they could see in the evidence that I've heard. I'm just listening to and reading the evidence, and it's almost irrelevant to me what the outcome is if the pieces of paper could be seen or couldn't be seen. The truth is we're not going to prove it, but we ought to allow a fair description of that record to be where people are going to draw whatever inferences they want.

All I'm saying, Mr. Chairman, is that if the testimony from Mr. Markland and Mr. Hume is that the briefcase was down by his side

and he's pulling out pieces of paper and he looks down like that, my recollection is that when I had the briefcase down by my side and pulled papers out, you couldn't see through the flap to the other side of the flap. You don't know what's on the other side of the flap.

Now, all I'm suggesting is it is perfectly possible that someone standing over there looking toward it might have seen yellow Post-its except that apparently that was when there were files in it, not out of it. Someone else may have been able to look from this side of it and look at the flap and not see what was on the other side of the flap.

So, when I hear people testifying by God, he could have seen it, I could have seen it from there, it's just pure conjecture. It's not scientific. It's not even a fair and accurate judgment based on where that person may or may not have been standing. The only reason I held the briefcase the way I did was to demonstrate how totally incompatible that was with all of the representations of how it was in fact presented.

I'm just looking for facts here. It seems to me that's our responsibility to the American people, but we shouldn't be trying to bend over backward to force something to appear as it wasn't in order to make a judgment fit what we would like it to fit. That is not fact-finding and that's not good accurate detective work or anything else. I think that's the important point to note here.

The CHAIRMAN. Senator Simon.

Senator SIMON. Yes, Senator Sarbanes, Mr. Chairman, you'll be pleased to know I have only one briefcase question.

Detective Markland, when Senator Murkowski asked you did Mr. Nussbaum close the briefcase you said no. Isn't it true that because of the style of briefcase it is, it semicloses itself?

Mr. MARKLAND. I'll clarify that. He let go of the top and slid it back. What happened to the top of that, whether or not it closed itself——

Senator SIMON. It's the kind of briefcase that you have to pull open to get things out and then it closes itself?

Mr. MARKLAND. It opens on the top in that manner, yes, sir.

Senator SIMON. All right. Mr. Hume, in your deposition of June 29th, you say in response to a question:

Answer: I do feel that—I feel like you're trying to trick me. I don't know why, and maybe I'm a little more leery today because I've given a deposition, I don't know, but I do sense that.

Then—I'm skipping some questions here—the question is:

Question: Were you concerned about the fact that the Park Police investigators would not be allowed to see the documents?

You say in part here in response:

Answer: I'm probably more upset having to come up here today than I was then, to be honest with you. I felt like I had some control. Whether the Justice Department guys were there or not, I still had a little bit more control over things, you know, than trying to give you the answers. It's almost like you're looking for a certain answer and you want me to give you that answer and if I don't give you that answer you're going to keep hounding me until I give you that answer. I'm not going to do that.

Question: We want to get out all the information.

Answer: You've made it more obvious than anyone I've given a deposition or been interviewed by and you want me to give you a certain answer and I've not experienced that before, even up here.

What kind of an answer were they trying to get out of you?

Mr. HUME. I think at the time, Senator, I guess this was either the seventh or eighth time I had been interviewed in depth. I think that was the second deposition, and it might have just been a chemistry thing between me and the person that was interviewing me. I was probably a little frustrated at that time. I expect that's the only way I can explain that. It was just not a smooth transition or exchange of information at that point, I think.

Senator SIMON. But you don't today have a feeling that they were trying to make you say something that you didn't believe?

Mr. HUME. Not really. Even if they did, I don't believe I would say that. I would say what I believe.

Senator SIMON. OK. Sergeant Markland——

Senator SARBANES. Excuse me. Was this when you were being deposed by the staff of this Committee, is that the exchange that was being quoted?

Mr. HUME. That's correct, Senator.

Senator SIMON. Sergeant Markland, I don't know if you've ever heard the term "turf battles."

Mr. MARKLAND. I've heard that term, yes, sir.

Senator SIMON. We have those up here on Capitol Hill.

Mr. MARKLAND. We've had those in New York also, Senator.

Senator SIMON. You have those occasionally in police organizations?

Mr. MARKLAND. Yes, sir.

Senator SIMON. When you testified that you wanted, and I'm quoting, "to play with Mr. Nussbaum a little," or "a little bit," is this in response to a little bit of a turf battle that was going on in terms of who was to control what?

Mr. MARKLAND. I believe if you read maybe another sentence in that passage it was just to remind Mr. Nussbaum that police were still there and partially to demonstrate a little bit of annoyance in how the procedures were going, yes.

Senator SIMON. You recognize that we're dealing with a very unusual situation here. If you were just to determine who has what responsibility, White House Counsel on behalf of executive documents, on behalf of the President, Secret Service, Park Police, Justice Department, how would you allocate things?

Mr. MARKLAND. Allocate things? Park Police were in charge of the death investigation. Justice, I thought, was going to intercede on our behalf with White House Counsel's Office and come up with a satisfactory solution to any privileged information problems that might arise in that office.

Senator SIMON. But the reality is you had to hesitate before answering the question because it is not a simple question. I'm not critical of you for hesitating. I'm simply suggesting that part of the problem that we face is a simple turf problem where Justice Department people, the Park Police, Secret Service, White House and others think they have some jurisdiction. Is that a fair statement to make?

Mr. MARKLAND. It throws a few more complications into the equation, but the lines are fairly clearly drawn in the situation. In dealing with this whole DC area we encounter multiple jurisdictions a lot, but they are basically worked out on who has the authority to investigate certain situations. I'm not sure if I'm answering your question directly or not.

Senator SIMON. All right. I think the point has been made.

People have asked why didn't Bernie Nussbaum see those scraps of paper and Senator Kerry has talked about that. Have you ever had your wife—I don't know if you are married or not, Sergeant. Are you married?

Mr. MARKLAND. I certainly am.

Senator SIMON. Have you ever had your wife ask you why didn't you see something, why didn't you notice something? You may want to plead the Fifth Amendment on that.

Mr. MARKLAND. I'm sorry, but if it's that important, if there were a bunch of FBI, Secret Service, Park Police and Justice Department people sitting in my living room, I would have seen it.

Senator SIMON. But it is possible that you may have missed something, you may have even gone through a stop sign at some point you didn't see? I confess I've done that. We can sometimes not see something. Is that possible?

Mr. MARKLAND. I haven't met a perfect person yet, Senator, I can tell you that.

Senator SIMON. I have no further questions. I yield the balance of my time to Mr. Ben-Veniste.

Senator SARBANES. Mr. Hume, let me just follow up on that very point that Senator Simon has been pursuing. Did you think Mr. Nussbaum lied about not seeing the yellow pieces of paper in the briefcase?

Mr. HUME. Senator, I've been asked that question before, and I wish he would have found it and that's the way I answered the last time. I don't want to sit here and say he lied.

Senator SARBANES. In fact, you said that "the more and more I think about it and try to give him due credit, I don't know." This is from your deposition. "I can't sit here and tell you how I've answered all the other dozen or so times I've answered the question," right? So you don't know?

Mr. HUME. I'm not going to call him a liar.

Senator SARBANES. You have not reached that conclusion?

Mr. HUME. No.

Senator SARBANES. Agent Markland, were Mr. Adams and Mr. Margolis sitting in chairs by the desk when this process was being conducted by Nussbaum in Vincent Foster's office on the afternoon of July 22nd?

Mr. MARKLAND. They were in the office on—if I can use the term—"our side" of the room. Mr. Margolis was to my left in a chair. I believe Mr. Adams was standing in that vicinity.

Senator SARBANES. Now, we've had testimony, we had another diagram that was put up that showed them, Nussbaum and the two Associate Counsels, behind the desk. The rest of the investigators were on the other side of the desk, but they had Margolis and Adams in chairs on this side of the desk fairly close to the desk and then others positioned all around, some on the sofa, some sit-

ting elsewhere, some apparently even standing. How big is that office?

Mr. MARKLAND. It's not very large.

Senator SARBANES. There were, what, 13 people in there? More than 13, I guess.

Mr. MARKLAND. I'm not sure of the exact number. Around 13, I guess.

Senator SARBANES. Do you remember Margolis and Adams sitting in chairs on this side of the desk?

Mr. MARKLAND. He was sitting in a chair on the same side of the desk that I was on.

Senator SARBANES. Right.

Mr. MARKLAND. To my left slightly in front of me.

Senator SARBANES. Closer to the desk.

Mr. MARKLAND. Slightly closer, yes.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Sergeant Markland, I have several questions. Mr. Ben-Veniste asked you a number of questions about the delay from the White House with regard to turning over the scraps of paper that constitute the Foster note to the Park Police, and the Park Police ultimately received 27 pieces of paper; is that correct, sir?

Mr. MARKLAND. I believe that's correct.

Mr. GIUFFRA. Do you know if the Park Police received the entire Foster note? Could——

Mr. MARKLAND. I believe we did.

Mr. GIUFFRA. Could there have been another page, for example?

Mr. MARKLAND. Anything's possible. I have no idea what was found, what was there, except what was ultimately turned over to me.

Mr. GIUFFRA. Captain Hume, wasn't there a missing piece of the note?

Mr. HUME. That's correct. A small section that, from all appearances, looked like a page from a legal pad and looked like a piece that would have been from an area where there was no writing. It was a very small piece.

Mr. GIUFFRA. Didn't you make an effort to try to find that piece of paper looking through the briefcase?

Mr. HUME. That's correct. That was, I believe, on July 29, when Detective Markland and I went back up to the White House to interview Mr. Nussbaum and Steve Neuwirth.

Mr. GIUFFRA. You were concerned about trying to find that missing piece of the note; is that correct?

Mr. HUME. Somewhat, but we also wanted to look at the briefcase.

Mr. GIUFFRA. Do you think it's possible there could have been a second page to that note?

Mr. HUME. It's possible, but we interviewed Mrs. Foster. She had stated to us that she had asked Mr. Foster to write down some of the things that were bothering him or troubling him and she believes he wrote that note about a week to a week and a half before his death. I just sense there were many other things that were bothering him. Perhaps she would have had him write that, I don't know. I'm just guessing here.

Mr. GIUFFRA. Do you remember asking Mrs. Foster whether there were two pages to the note?

Mr. HUME. No, I didn't ask her.

Mr. GIUFFRA. Sergeant Markland—if we could put up on the screen 45 and 56—this is the report you wrote with regard to your interview of Mr. Neuwirth and Mr. Nussbaum after the discovery of the scraps of paper, and if I could direct your attention to the bottom of this report. I'll just read from the report: "Mr. Nussbaum then related that the following people were contacted to view the document"—meaning the Foster note, I would imagine; is that correct?

Mr. MARKLAND. Yes, sir.

Mr. GIUFFRA. —"before a determination could be made to disclose it to the U.S. Park Police." Is that correct?

Mr. MARKLAND. Yes, sir.

Mr. GIUFFRA. Then it lists five names, Bill Burton, Deputy Chief of Staff; Thomas McLarty, Chief of Staff; Lisa Foster, wife of Vincent Foster; Philip Heymann, Deputy Attorney General; and Janet Reno, Attorney General.

Now, did Mr. Nussbaum mention to you that he had shown or attempted to show the note to the First Lady, Mrs. Hillary Clinton?

Mr. MARKLAND. No, sir, he didn't. On the following page I made reference to the fact that President Clinton was made aware of the existence of the document, but these are the specific people he told me that had to review it.

Mr. GIUFFRA. So he made no reference to Mrs. Clinton; is that correct?

Mr. MARKLAND. That's correct.

Mr. GIUFFRA. Thank you.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Just to go back, again, to who was present on this occasion of July 22, 1993, I'll just run through it and you tell me if I've got it right. I know it's been done before, but the following people were present during the meeting: William Burton, Deputy Chief of Staff for the President; is that right?

Mr. MARKLAND. Yes, he was there.

Senator SHELBY. OK. Clifford Sloan and Stephen Neuwirth, Associate Legal Counselors to the President.

Mr. MARKLAND. Yes, sir.

Senator SHELBY. The White House Counsel. Michael Spafford, attorney representing the Foster family.

Mr. MARKLAND. Yes, sir.

Senator SHELBY. Captain Charles Hume and you, Detective Markland, for the U.S. Park Police; right?

Mr. MARKLAND. Yes, sir.

Senator SHELBY. Special agents of the FBI, Scott Salter and Dennis Condon.

Mr. MARKLAND. Yes.

Senator SHELBY. David Margolis, a Deputy Assistant Attorney General, Criminal Division of the Justice Department.

Mr. MARKLAND. Yes.

Senator SHELBY. Roger Adams, Department of Justice attorney.

Mr. MARKLAND. Yes.

Senator SHELBY. Finally, Paul Imbordino and Donald Flynn, U.S. Secret Service.

Mr. MARKLAND. Correct.

Senator SHELBY. That's everyone that was present when this meeting took place on Thursday, July 22, 1993 in the Counsel's Office?

Mr. MARKLAND. Yes, sir.

Senator SHELBY. Mr. Markland, you've been a police officer for 17 years, is that more or less right?

Mr. MARKLAND. Actually 19 in September, counting the 2 years of Secret Service.

Senator SHELBY. Whatever, more or less?

Mr. MARKLAND. Right.

Senator SHELBY. In all of your years in working as a police officer and as a detective—you also do detective work and on this occasion were assigned to do the investigation, is that correct, for the Park Police?

Mr. MARKLAND. Yes.

Senator SHELBY. Have you ever experienced interference with a lawful investigation as you experienced in the White House with Mr. Nussbaum and others? In your 17 years, or whatever it is, have you ever had some people interfere with an investigation like that?

Mr. MARKLAND. I have never experienced that degree of uncooperativeness.

Senator SHELBY. Were you surprised at the White House Counsel not being cooperative in an investigation like this?

Mr. MARKLAND. Yes, I was.

Senator SHELBY. Is it basically undisputed from what you observed on this occasion of Thursday, July 22, 1993, that Mr. Nussbaum, the White House Counsel, was in total charge of an investigation?

Mr. MARKLAND. He was calling all the shots at the White House.

Senator SHELBY. He was calling the shots, was he not?

Mr. MARKLAND. Yes, sir.

Senator SHELBY. Did you feel after going through this meeting that you had made an investigation, in other words, you had had a chance to review or see any documents that might have helped you in your investigation?

Mr. MARKLAND. No.

Senator SHELBY. The answer is no. I want to go back into your deposition, if I can. We'll start on pages 211 to 216. That's the page before. Referring to Mr. Nussbaum, the question was to you:

Question: Was there anyone standing or sitting next to Mr. Nussbaum at this point in time when he was looking through the briefcase? Do you recall if Mr. Sloan was present or Mr. Neuwirth?

You answered:

Answer: I believe they were both present. They would have been right in the immediate right behind his chair.

You mean Mr. Nussbaum's chair; is that correct?

Mr. MARKLAND. For some reason I can't locate the passage, but what you are saying is correct.

Senator SHELBY. OK. The question was:

Question: You think they would have been standing in a position where they could have seen into the briefcase?

The answer you gave, and I read:

Answer: Yes, I think so.
Question: Do you recall whether Mr. Spafford was in a position where he could look into the briefcase?
Answer: He may have been, but the way his demeanor was he didn't seem like he was trying to act overly interested in things that would be of no concern to him. He was more standing by to take possession of whatever they wanted him to release.
Question: Was Mr. Burton in a position to where he could see what was in the briefcase?
Answer: At that time I couldn't say. There were a couple of times when he went in and out of the room, had free access, but I couldn't say if he was looking right down there.

Meaning right down at the briefcase?
Mr. MARKLAND. Yes, sir.
Senator SHELBY. I'm continuing to read:

Sloan and Neuwirth were right behind Nussbaum. They would both at times whisper in his ear every time they came across a document in deciding what they wanted to do with it.
Question: Now, after Mr. Nussbaum had taken—was it file folders that were in the briefcase or loose paper?
Answer: Pretty much loose papers.
Question: After he emptied the briefcase of the loose paper, would this be paper 8½ by 11?
Answer: He would take them out and review it as he emptied it. He didn't dump anything on the desk and then go through it.
Question: He took each document out one by one? Do you recall if there were legal pads such as yellow legal pads?
Answer: I don't recall. I wish I could.
Question: Do you recall if there were any pens in the briefcase?
Answer: I can't remember.
Question: Do you recall if there were any Post-it notes—the little notes that we tear off and stick them on or whatever—out of the briefcase?
Answer: I don't remember.
Question: Did he—I assume you are speaking of Mr. Nussbaum—return the papers back into the briefcase?
Answer: No.
Question: So he placed all of the papers in the various piles that we've talked about and your recollection is that then he looked into the briefcase?
Answer: He said it was empty.

My question to you, did he look into the briefcase and then say it was empty?
Mr. MARKLAND. Yes, sir.
Senator SHELBY. I'm still reading from your deposition, and the next question was:

Question: At that point when he said it was empty, did Mr. Neuwirth, the Counsel, you will recall, who later claimed he found the torn-up pieces, at that point when he said it was empty, did Mr. Neuwirth say anything, did he concur, shake his head up and down or what?
Answer: I don't recall.
Question: Do you recall whether he was looking in the briefcase at that point?
Answer: I was just focused on the briefcase. For some reason I was staring at the briefcase what I could see of it.
Question: Do you recall whether Mr. Sloan was looking in the briefcase?
Answer: I don't recall. Like I said, they were right there.

In other words, you mean the Counsel were both standing by Mr. Nussbaum, is that right?
Mr. MARKLAND. That's correct.
Senator SHELBY. Continuing to read:

Question: Your testimony is that Mr. Nussbaum was sitting at his chair—at Foster's chair and he is looking in the briefcase. About how far was Mr. Nussbaum's eyes from the top of the briefcase as best you could tell, a foot, 6 inches?
Answer: Somewhere between 2 to 3 feet. I don't know. He's a short guy.

Is this correct?

Mr. MARKLAND. That's correct.

Senator SHELBY. Continuing on to the next question:

Question: Did it appear to you he was looking down directly into the bottom of the briefcase?
Answer: Yes.

Is that your answer today?

Mr. MARKLAND. Yes, sir, it is.

Senator SHELBY. The next question was:

Question: Given where Mr. Nussbaum was sitting and the location of the briefcase, had there been a torn-up note in the briefcase, do you think it would have been possible for him not to have seen it?
Answer: I don't believe so.

In other words, he couldn't have missed it, could he, if it was there?

Mr. MARKLAND. I don't see how, sir.

Senator SHELBY. If these pieces of paper were in the bottom of that briefcase—27 pieces—and the briefcase was open, he was looking at it, he had picked it up, he couldn't have missed them if they were there, could he?

Mr. MARKLAND. I don't believe so.

Senator SHELBY. Thank you. Counsel's question following up was:

Question: And why do you believe that?
Answer: Because he's looking for documents.

In other words, looking for documents was the exercise, was it not?

Mr. MARKLAND. Not only documents, but——

Senator SHELBY. Anything.

Mr. MARKLAND. More than likely, specifically that kind of a document.

Senator SHELBY. Torn-up notes or anything that could have shed light on what the investigation was about?

Mr. MARKLAND. Yes, sir.

Senator SHELBY. I'll read your question again to you, "And why do you believe that?" You then said, "Because he's looking for documents."

Mr. Nussbaum is who you're talking about?

Mr. MARKLAND. Yes, sir.

Senator SHELBY. Reading from your deposition, you said:

He has a co-worker and friend who is dead. One of the things he may be looking for could presumably be ripped up. He is not a stupid person.

You are talking about Mr. Nussbaum; right?

Mr. MARKLAND. Yes, sir.

Senator SHELBY. Continuing to read from your deposition, you said:

And he physically picked up the briefcase at one point and tilted it and I saw it come off the floor and tilt. And then he put it down and said it's empty.
Question: The first time Mr. Nussbaum said the briefcase is empty, it was on the floor; is that correct?

Answer: Yes.
Question: Do you recall for how long he was looking into that briefcase, 2, 3, 4 seconds, 1 second?
Answer: Yes, it was brief. He had been constantly taking papers out of there and reviewing them.
Question: How long do you think this whole process of searching the briefcase took?
Answer: Probably 5 minutes.

Mr. Markland, if, in fact, that briefcase was empty, you wouldn't see anything, would you? That's factual. You wouldn't see bits of 27 pieces of paper at the bottom of it if it were, in fact, empty as Mr. Nussbaum said on this occasion?

Mr. MARKLAND. That's a true statement, yes, sir.

Senator SHELBY. Could someone have put those pieces back in that briefcase if it, in fact, had been empty?

Mr. MARKLAND. Yes, sir, that's the only remaining possibility if Mr. Nussbaum was telling the truth.

Senator SHELBY. That's right. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I see there's a vote on so I assume we'll go and come back.

The CHAIRMAN. I don't think we have any other questions.

Senator SARBANES. We have about 20 to 30 minutes of questioning left.

The CHAIRMAN. Do you?

Senator SARBANES. Yes.

The CHAIRMAN. Why don't we start it until we get the buzzer and then we'll come back.

Senator SARBANES. All right.

Mr. Hume, just to demonstrate the point that two people in a room may have different perceptions of what took place, I listened with interest to what Senator Shelby read from Mr. Markland's deposition.

But in your deposition about this question of Nussbaum and the briefcase—and I just want to ask you at the end whether this is still your recollection of the scene—you said:

The first time he went down and brought some papers up, I mean there were papers in there, that's where he came from. I don't know how much he could have seen in there because there were papers. Second time I remember him picking it up, and he's talking. He just kind of did that and he's talking. He never took that briefcase and spread it open and looked down at it like I would or you would now in retrospect if we thought something was in there. That never happened. It was never obvious that he pulled that briefcase open and looked down in it that I remember.

Then counsel put some questions to you testing that, I guess, is one way to put it. Later you said:

Right, I explained that he reached down and he picked it up, he looked and he's talking almost contemporaneous with all of this. And like I said, he either put it back against the wall or sat it down. And later I remember like a three-part event that I've tried to explain that. The first time the papers came up. Second time was a pick up as he's talking. Third time he moves it back. Whether that second and third time is one motion or two motions—as I said when it was fresh in my mind, if I thought that was going to be important, I would have put that in the report. But I can tell you at no point do I remember him picking that briefcase up and pulling it out like I would, like I looked in it when I went back up there the following week or whatever, after we had gotten the call about the note.

Now, is that still your recollection today of what took place?

Mr. HUME. That's correct, Senator, that's still my recollection.

Senator SARBANES. Even as you sit here and listen to all this other testimony, this is still what you remember as far as the handling——

Mr. HUME. That's correct. I have a better memory of a lot of things, but not of that one, Senator.

Senator SARBANES. Mr. Chairman, why don't we go vote—I see the five lights are up—and come back.

The CHAIRMAN. All right. How long do you think you'll need, Mr. Ben-Veniste?

Mr. BEN-VENISTE. Twenty minutes.

The CHAIRMAN. If we could hold it to 20 minutes you would be pressed to sharpen your questions. We're going to take a brief recess. We have a vote. We should be back in 10 minutes. I'm going to thank the panel. We will be right back.

[Recess.]

The CHAIRMAN. I know we're all waiting for Chief Langston, but we're going to begin and then if we have any questions for Chief Langston, we'll get to them.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Sergeant Markland, let me call your attention to July 21, 1993, that's the day after Mr. Foster's suicide, and your conversation with Mr. Nussbaum on the 21st. You with me?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. On that day, is it correct that Mr. Nussbaum told you that he, together with Patsy Thomasson and Maggie Williams, conducted a brief search of Mr. Foster's office the previous evening, the evening of the 20th looking for a suicide note?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. They told you that and you included it in your report of July 21, 1993?

Mr. MARKLAND. I did reference that in the report, yes.

Mr. BEN-VENISTE. Now, at that time you did not say anything to Mr. Nussbaum about whether the office had been sealed the night before, did you?

Mr. MARKLAND. I knew that it had not been.

Mr. BEN-VENISTE. OK. Now, let me ask you, if I could, with respect to the search conducted by Mr. Nussbaum in your presence on July 22, 1993.

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Again, you were looking for a suicide note or related kind of writing or information that would lead you to interview witnesses such as Captain Hume referenced earlier when you telephoned the doctor who was in the message pad; correct?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. So, most specifically, as you've testified previously, you were not interested in looking at any substantive real estate investment of the Clintons or the tax files of Mr. and Mrs. Clinton or the appointments to the Supreme Court or anything like that, were you?

Mr. MARKLAND. No, sir. Information like that might only be important if somebody brought it up in an interview that something

was greatly disturbing Mr. Foster, he was working on something like that.

Mr. BEN-VENISTE. Indeed, Captain Hume, you participated in the interviews, and, indeed, did you have a view about whether the presence of White House attorneys in these interviews of the staff were helpful or were not in connection with what you were trying to accomplish?

Mr. HUME. I think my first reaction to that was I thought maybe it was detrimental, but later, after giving it some thought, it probably proved to be somewhat helpful.

The reason I say that in the beginning is because I think Detective Markland has already testified to that. Pete and I talked about that just before we went in to interview these ladies. I told Pete I'm going to ask Ms. Pond if she had been told what to say. I wanted to make that a matter of record. Had someone briefed her on how to answer our questions? So there was some concern initially, but the end result is that for all the questions I asked I got responses, so there was no interference.

Mr. BEN-VENISTE. Indeed there were occasions when the witnesses who were being interviewed were prompted by the attorneys and then supplied more information, isn't that so?

Mr. HUME. Toward the end, I think. I believe it was Mr. Sloan who confirmed something that Ms. Pond had told me about a ceremony in the Rose Garden that morning. That's what I meant by "helpful toward the end."

Mr. BEN-VENISTE. So initially you thought that this might be a good idea and then you changed your opinion after you saw how the process went?

Mr. HUME. That's correct.

Mr. BEN-VENISTE. You heard, did you not, the testimony of Ms. Gorham and Ms. Tripp about what they had been told in preparation for your interviews? Did you hear that here today?

Mr. HUME. That's correct.

Mr. BEN-VENISTE. Did that seem to be appropriate guidance?

Mr. HUME. Yes, yes, it did.

Mr. BEN-VENISTE. So that as far as you could tell, there was no intent to obstruct and indeed you were not obstructed in any way in connection with your interviews?

Mr. HUME. I was interrupted, but not hindered in any other way.

Mr. BEN-VENISTE. At one point I believe you testified Mr. Nussbaum poked his head in and said is everything OK and startled you and then left the room just as promptly?

Mr. HUME. That's correct.

Mr. BEN-VENISTE. You didn't feel that that obstructed your investigation in any way, I take it?

Mr. HUME. No, sir.

Mr. BEN-VENISTE. Now, during the course of the discussions about what was privileged and not privileged during the search of the 22nd, did there come a point where you felt that the lawyers, the Justice Department lawyers and the White House lawyers, were getting into stuff that seemed to you to be absurd?

Mr. HUME. I called it a lot of legalese, and we have a little term we use for that, the lawyers' club. I think that's what a lot of that was.

Mr. BEN-VENISTE. Sergeant Markland, did you feel that things were getting beyond your level of interest even when the lawyers started discussing whether certain things were privileged or not such as newspaper articles?

Mr. MARKLAND. It bordered on ridiculous.

Mr. BEN-VENISTE. Indeed, there was a discussion about whether certain newspaper articles which were in Mr. Foster's files would be considered privileged or not?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Do you remember that, Captain Hume?

Mr. HUME. Yes, I do.

Mr. BEN-VENISTE. In fact, I guess you were startled when you found that the lawyers from the Department of Justice agreed with Mr. Nussbaum's position that these might well be privileged because they take the same position over at the Department of Justice when they're asked for documents?

Mr. HUME. Right, I was surprised that they took such a strict view.

Mr. BEN-VENISTE. So all of this stuff about now—there were lawyers involved, there are a bunch of other investigators in the room—all of this was much different than what you had envisioned when you first wanted to come over on the 21st, isn't that so?

Mr. HUME. That's correct. I think we were looking for cooperation.

Mr. BEN-VENISTE. I think Senator Kerry, in his questions to you, put it very succinctly; you would have liked it if things had been a lot less formal and that this cup of coffee approach, come on guys, let's see if we can find this, let's look together and what do you need, that's what you were anticipating, I take it?

Mr. HUME. That would have been nice, yes.

Mr. BEN-VENISTE. Is it true, however, that in your experience you had never been involved in going through documents in a deceased attorney's office before, much less the Attorney for the President of the United States?

Mr. HUME. That's correct, and I just wanted to clarify that a little further. I think had we been dealing with an attorney's office outside of the White House, especially if it was a criminal type thing, we would be in consultation with an Assistant U.S. Attorney and it would have been approached, of course, differently.

Mr. BEN-VENISTE. Of course, this was under circumstances where the Department of Justice lawyers had advised you that—really, I mean, there was no effort to get a search warrant or a subpoena duces tecum for these records, you were trying to work out some procedure that would balance the interests involved?

Mr. HUME. Right. As I testified earlier, Mr. Phil Heymann had spoken to me at least on two occasions and in one of the conversations, of course, he told me who he was, that he was the number two man at the Department of Justice, and I knew what that meant, of course.

Mr. BEN-VENISTE. When the search went forward under the procedures that Mr. Nussbaum had outlined, neither you nor Sergeant Markland voiced any objection to those procedures, is that so?

Mr. HUME. When I got in that room is when I really learned, indeed, what was going to take place. The impressions that I had

formed actually didn't occur. I thought it was going to be handled a little bit different, and I didn't learn that it was going to actually go this route until I got in there. I have to agree with Detective Markland, perhaps we were not needed once it got to that stage.

Mr. BEN-VENISTE. But, in any event, you listened to the descriptions of the material and where something seemed relevant or interesting to you, either you or the Department of Justice lawyers spoke up and said we would like to have that put aside?

Mr. HUME. Certain items. I think there were some that went rather fast, that probably didn't get as much attention from the lawyer on the police side perhaps as they should have.

Mr. BEN-VENISTE. There were a whole lot of files in there relating to policy matters, health care and the like?

Mr. HUME. I do recall quite a few volumes of health care manuals in that office.

Mr. BEN-VENISTE. Now, if we could put back up on the screen, back up on this Elmo I think it's called, the Markland Exhibit 1, that sketch. Before I got involved in these hearings I thought Elmo was a character on Sesame Street.

Now, Detective Markland, you didn't try to draw this to scale?

Mr. MARKLAND. No, sir.

Mr. BEN-VENISTE. OK. So taking that into account, you've got "DM" which is David Margolis, I guess, in a square there and Mr. Adams, "RA," to his left?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. Is that where you recall they were or do you recall that they may have been sitting in front of the desk?

Mr. MARKLAND. No, Mr. Margolis was just a few feet away from me in a chair off to my left.

Mr. BEN-VENISTE. Was there as much space between the couch and Mr. Foster's desk as it would seem to appear by this sketch, or do you think you've been a little generous?

Mr. MARKLAND. It's a fairly small room, and I don't believe I'd be able to read any printed pages on the desk were I to stand up.

Mr. BEN-VENISTE. Is that a yes or a no to my question?

The CHAIRMAN. The question is, might you have been a little closer or is that a pretty good estimate as to where you were?

Mr. MARKLAND. That's as close to how it was as I can remember. Considering the number of people that were standing around, I think it's fairly well-spaced the way it is.

Mr. BEN-VENISTE. You recall that Mr. Adams was sitting to Mr. Margolis' left as you were facing them?

Mr. MARKLAND. He was off to his left, I'm not sure if he was sitting or standing. I think chairs were provided, but I don't recall.

Mr. BEN-VENISTE. Can you describe Mr. Foster's desk as you saw it that day?

Mr. MARKLAND. In reference to——

Mr. BEN-VENISTE. Was it a desk that had an opening through the middle?

Mr. MARKLAND. Yes, those two hash marks that I made that you are pointing to now basically outline the space that is open in the middle.

Mr. BEN-VENISTE. Was the desk on a pedestal so that the center portion underneath the writing surface was open?

Mr. MARKLAND. Yes, yes, sir.

Mr. BEN-VENISTE. You were sitting on the couch?

Mr. MARKLAND. Yes.

Mr. BEN-VENISTE. Did you bend over, bend down to get on the floor level when Mr. Nussbaum reached down to put his briefcase on the floor?

Mr. MARKLAND. No, I could see directly through, and actually I'd be a little more to the right because I had a straight line of vision from where I was seated to the briefcase.

Mr. BEN-VENISTE. Without bending over, you were sitting up straight and Mr. Margolis and Mr. Adams were not obstructing you to your recollection, you had a clear view of the briefcase?

Mr. MARKLAND. Yes, sir.

Mr. BEN-VENISTE. Did you say at some point that you had a three-quarter view of the briefcase, do you remember that?

Mr. MARKLAND. It's possible, I could see what was being done with the briefcase from where I was.

Mr. BEN-VENISTE. So that when Mr. Nussbaum bent over to his side and back it is your testimony that you could still see through that center portion, without bending over to the side, everything that Mr. Nussbaum was doing with that briefcase?

Mr. MARKLAND. That's my recollection, yes, sir.

Mr. BEN-VENISTE. Now, the briefcase as you described it, you had a recollection of it, I take it. What color was it?

Mr. MARKLAND. It was a dark color.

Mr. BEN-VENISTE. What color?

Mr. MARKLAND. I could not identify that briefcase with certainty today or point to a specific briefcase and say that's it.

Mr. BEN-VENISTE. When you were asked in your deposition to describe it, what color did you give?

Mr. MARKLAND. I can't recall. It was dark. It was either dark brown or black. I'm not sure. It was a dark color.

Mr. BEN-VENISTE. You said it was dark brown. Does that refresh your recollection?

Mr. MARKLAND. If you are reading from my deposition and that's what you are telling me I said, then I'll believe you, sir.

Mr. BEN-VENISTE. I don't want to put words in your mouth. Is that your best recollection, that it was dark brown?

Mr. MARKLAND. It was a dark color.

Mr. BEN-VENISTE. At page 220 of your deposition I believe you described it as dark brown.

Mr. MARKLAND. I answered that question. I said I thought it was dark brown, but I might be wrong about that.

Mr. BEN-VENISTE. OK. Did you also say that it had a flap over the top?

Mr. MARKLAND. I said I thought it was the kind where there would be a flap over the top and the top would open, it opened at the top, you would sit it on the ground and it would open at the top.

Mr. BEN-VENISTE. Right. You thought that there would be a flap over the top; right?

Mr. MARKLAND. It's——

Mr. BEN-VENISTE. On page 195 of your deposition.

Mr. MARKLAND. That's what I just read, sir.

Mr. BEN-VENISTE. Let me now ask, Captain Hume, with respect to the materials that were removed from Mr. Foster's office and provided to Mr. Foster's family attorney, did you have the occasion to review those documents or did the Park Police, to your knowledge, have the occasion to review those documents?

Mr. HUME. The Park Police reviewed them. I did not personally review them.

Mr. BEN-VENISTE. Did they review all of the documents that they requested? In other words, were any held back?

Mr. HUME. All the documents that were at Mr. Spafford's office were reviewed.

Mr. BEN-VENISTE. Did there come a time when the Park Police reviewed documents in the White House Counsel's Office?

Mr. HUME. That's correct. I did that myself with another detective.

Mr. BEN-VENISTE. Were there any documents that you wished to review that were not provided to you?

Mr. HUME. No, sir.

Mr. BEN-VENISTE. Chief Langston, at the conclusion of the process of reviewing the documents, were you satisfied that all the documents that had been requested were made available?

Mr. LANGSTON. Yes, I was.

Mr. BEN-VENISTE. At that point or shortly thereafter, were you able to close your investigation?

Mr. LANGSTON. That's correct.

Mr. BEN-VENISTE. Now, that delay of 5 days from the 22nd, when you have indicated that if you were the one to have searched Mr. Foster's briefcase on that day you would have found the scraps of paper—and I have absolutely no reason to doubt that you would have had you searched that briefcase that day as a trained police officer—until the 27th, when it was made available to the Park Police by the White House, did that obstruct your investigation, that period of time?

Mr. HUME. It certainly slowed it down.

Mr. BEN-VENISTE. Did it push you in a different direction than where you were going?

Mr. HUME. No, sir, because as time went along we were obtaining other evidence. There were a couple of other interviews that we had done that provided information.

Mr. BEN-VENISTE. Was the content of the note which was found, was that in every way consistent with the conclusion that you had reached regarding the cause of Mr. Foster's death?

Mr. HUME. It was another piece of evidence that was valuable in reaching that conclusion.

Mr. BEN-VENISTE. Chief Langston, do you agree with that?

Mr. LANGSTON. Yes, the preponderance of evidence that keeps building, it keeps adding to the preponderance.

Mr. BEN-VENISTE. Indeed, the other information that you obtained from the White House including the identification of Mr. Foster's physician back in Arkansas were other important pieces of information that helped you reach the conclusion that you reached?

Mr. HUME. Absolutely.

Mr. BEN-VENISTE. Now, when the Park Police interviewed Mrs. Foster—and I'll conclude here, Mr. Chairman—were you present, Captain Hume?

Mr. HUME. Yes, I was.

Mr. BEN-VENISTE. Did you ask Mrs. Foster whether she could shed any light on this torn-up paper that had been found?

Mr. HUME. Yes, I've mentioned that earlier here today.

Mr. BEN-VENISTE. What was Mrs. Foster's view about how that document or how that writing got to be created?

Mr. HUME. As I recall, there were a couple of points made about that. One is that she had asked him to write down some of those things that were troubling him, and she thinks he wrote that about 1½ weeks prior to his death. Also, there was one other point, she said she had looked at it that night when she was called to the White House before the police had gotten it, and she said that was indeed his handwriting.

Mr. BEN-VENISTE. You had no question about that even though you went the additional step of getting handwriting analysis done to confirm that it was, in fact, Mr. Foster's handwriting?

Mr. HUME. We may have been doing it contemporaneous with that, I'm not real sure.

Mr. BEN-VENISTE. Detective Markland, do you recall?

Mr. MARKLAND. Yes, yes, we did.

Mr. BEN-VENISTE. Chief Langston, is that your recollection, that a handwriting expert from the Capitol Police, I believe——

Mr. LANGSTON. That's correct.

Mr. BEN-VENISTE. —provided you with a conclusion and that conclusion was later confirmed by a handwriting expert at the FBI?

Mr. LANGSTON. That's correct.

Mr. BEN-VENISTE. I have nothing further. Thank you, Mr. Chairman. I'm sorry to delay you on this important evening.

The CHAIRMAN. Thank you, Mr. Ben-Veniste and Senator Sarbanes. I want to thank you, Chief Langston, Detective Markland and Captain Hume. I think all of you have done the best that you could under very difficult circumstances. It is, to say the least, unusual when we have a death of this type, let alone someone with his high position, and obviously the place that you had to look at his office in the White House. It certainly did not make your job the easiest.

I think that you have testified in a very straightforward, candid manner, and have been as responsive as you possibly could. We are indebted to you for your service and for your testimony. We thank you.

We stand in recess until tomorrow at 9:30 when we will resume the testimony from the scheduled witnesses.

[Whereupon, at 5:46 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Wednesday, August 2, 1995.]

[Prepared statement and appendix supplied for the record follow:]

PREPARED STATEMENT OF ROBERT E. LANGSTON

CHIEF, U.S. PARK POLICE

AUGUST 1, 1995

Mr. Chairman, Members of the Committee, I am Robert E. Langston. I am a 30-year veteran of the U.S. Park Police and I have been Chief of Police since 1991.

I want to thank the Committee for the courtesy you extended members of the U.S. Park Police force who recently testified before this Committee. I am particularly grateful for your respect in light of irresponsible and baseless criticism that has been leveled at us from some individuals in the media, a relentless group of conspiracy theorists, and others.

With the Committee's indulgence, I would like to take this opportunity to clear up some misconceptions about a police force I am extremely proud to represent.

This proud organization traces its origins to the earliest days of our country's Government—in fact, to the Presidency of George Washington. The U.S. Park Police is the oldest Federal uniformed law enforcement agency—the only Federal uniformed police force trained and authorized to perform duties similar to those executed by urban metropolitan police departments.

Twenty-two percent of the District of Columbia is administered by the National Park Service and comprises our primary jurisdiction. In 1882 Congress passed legislation expanding our role here in Washington and granted to the U.S. Park Police the same powers and duties as the Washington Metropolitan Police Department.

In 1928 and 1930, Congress again expanded our police authority to include the Federal parks and parkways in nearby Maryland and Virginia.

In 1976, Congress passed legislation authorizing the establishment of U.S. Park Police field offices in two new Federal urban parks: the Golden Gate National Recreation Area in San Francisco, and the Gateway National Recreation Area in New York City.

Our force currently numbers 623 sworn officers. These officers are assigned in these two urban field offices and in the Washington area. Recently we were requested to provide security at the Statue of Liberty.

Visitors to national parks across the country often confuse "park rangers" with "park police." Some park rangers are armed and are known as "law enforcement rangers" and we both work for the Department of Interior, National Park Service; however, the training and mission of a National Park Service law enforcement ranger and a U.S. Park Police officer are substantially different.

All members of our police force receive intensive training at the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia. Of all the agencies receiving training at FLETC, our officers undergo the most extensive and follow a specialized curriculum.

U.S. Park Police are charged with the protection of National Park Service resources and properties in the three urban areas I have mentioned. We manage more than 1,000 demonstrations and special events annually, often dealing with crowds upward of 400,000; we enforce traffic laws and provide traffic control; we work in concert with other Federal law enforcement agencies to provide security for the President of the United States and for visiting dignitaries from around the world; and we have a cadre of highly trained professionals who investigate felonies and who are frequently assigned to Federal and local task forces targeting violent criminals.

In addition to our statutory authority and jurisdiction, we have entered into more than 60 memorandums of understanding with other law enforcement agencies including: the U.S. Secret Service, the U.S. Capitol Police, the San Francisco Police Department, the New York City Police Department, the Department of the Navy for services at Camp David, and the Department of the Army for police services at Arlington National Cemetery. We also have memorandums of understanding with many county and municipal police departments in the Washington Metropolitan area.

As police officers, we do our best to avoid being in the news; however, circumstances do not always cooperate. The incident that involves us in the matter before the Committee is certainly such a circumstance.

Mr. Chairman and Members of the Committee, I am here to answer any questions you may have and to assist you in clarifying issues before this Committee involving the U.S. Park Police.

Thank you.

APPENDIX

~~Justice~~
Thor golies
Atkins
2 Park Service
2 Secret Service (Flynn)
2 FBI

GC
BN
Cliff Sloan
~~Stewart~~
Steve Neuwirth
Bill Burton (Mchenty)

BN your description:
1) Top of Desk: White Hs News Report
video tape of 6/9/93 speech
WH calendar (xerox)
law bks
~~computer~~/secured phone user manual
Dir to secured phone
telephone dir)
~~campaign~~ brochures.
→ list of t/c (7/20) ← Margolies
→ documents relating to First Family (Trust, etc.)
note to Vince re legal research re health care
correspondence re Georgetown Law Center
→ editorials ← Margolies wanted to know if critical
articles on health care
internal correspondence re d/c duties
letter re d/c duties
memo re summer clerks
in folder entitled inmm → P&C info; motor vehicle mm. ←
letters re Pres.
note re confirm. process
job applicant

M: subst? surprising will but you over head

R-9

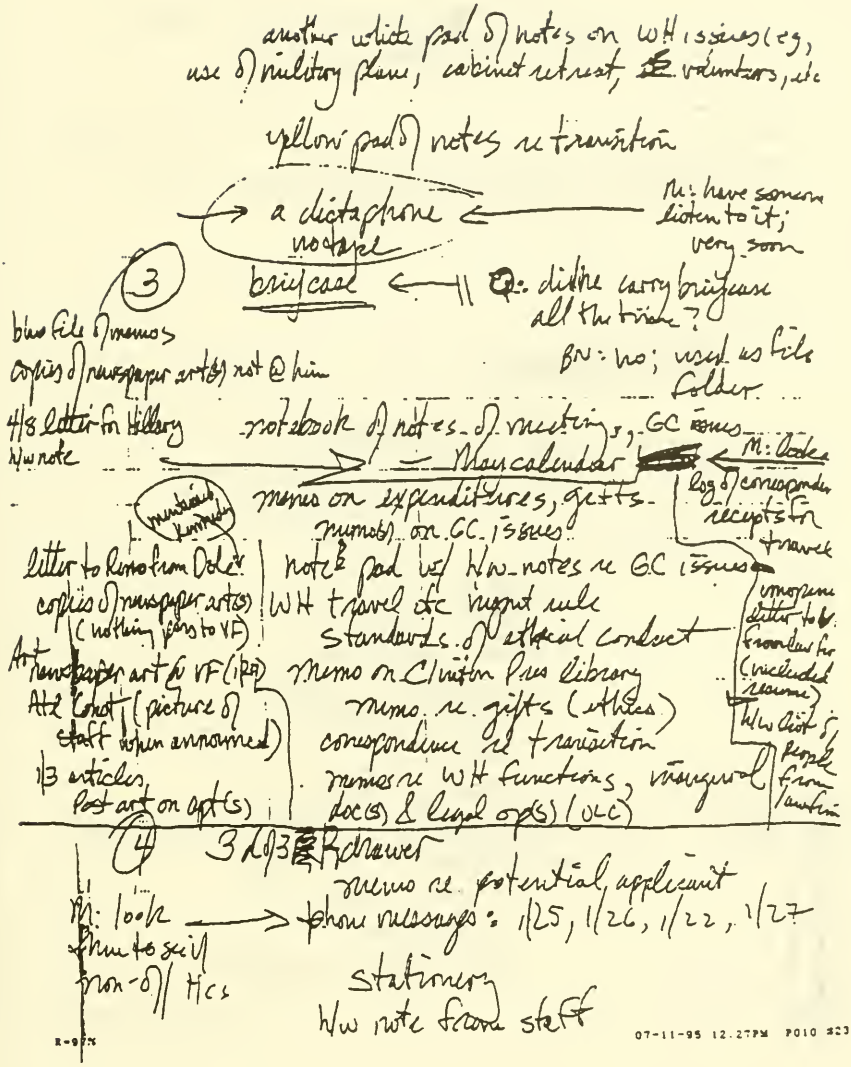
07-11-95 12:27PM P008 #22

corresp re travel
continuing education
letters re Pres; WH matters
reprint from lawyer
judicial op'n health care case
Ofc of Cour't Ethics pamphlet
internal memos from other counsel
letter to Biden
letter re WH social events
notes on pad
magazines
copies of WH correspondence
health malpractice reform
requests for speech
memo from VP
budget for GC
memo from WH w/ draft correspondence
phone log — 5/14
letter from Nat'l Archives re docs
memo re DC taxes -- memo from B Gray
→ name on page ←
green folder with lists of issues wk'd on

---

2) R top drawer (or not as stated)
→ — a map of metro Wash ←
— notes on issues wk'd on in GC ofc
— pad with notes on WH issues

07-11-95 12:27PM P009


another vehicle pool of notes on WH issues (eg, use of military plane, cabinet retreat, volunteers, etc
yellow pad of notes re transition
a dictaphone
no tape
briefcase
Re: have someone listen to it; very soon
Q: did he carry briefcase all the time?
BN: no; used as file folder
blue file of memos
copies of newspaper article(s) not @ him
H/S letter for Hillary
WW note
notebook of notes of meetings, GC issues
WH calendar
M: looks
log of correspondence receipts for transit
memos on expenditures, gifts
memo(s) on GC issues
letter to Reno from Dole
copies of newspaper article(s) (nothing goes to VF)
notes pad w/ WW notes re GC issues
WH travel etc input rule
standards of ethical conduct
memo on Clinton Pres library
memo re gifts (ethics)
correspondence re transition
memos re WH functions, management
doc(s) & legal op(s) (OLC)
Art newspaper art & VF (1pg)
Att Gnt (picture of staff when announced)
1/3 articles
Post art on opt(s)
3 1/3 drawer
memo re potential applicant
M: look
phone messages: 1/25, 1/26, 1/22, 1/27
phone to sell
non-of hics
stationery
WW note from staff
07-11-95 12:27PM P010 #23

h'w list of people who wk at w'd & addresses
box of 'ec'd cards

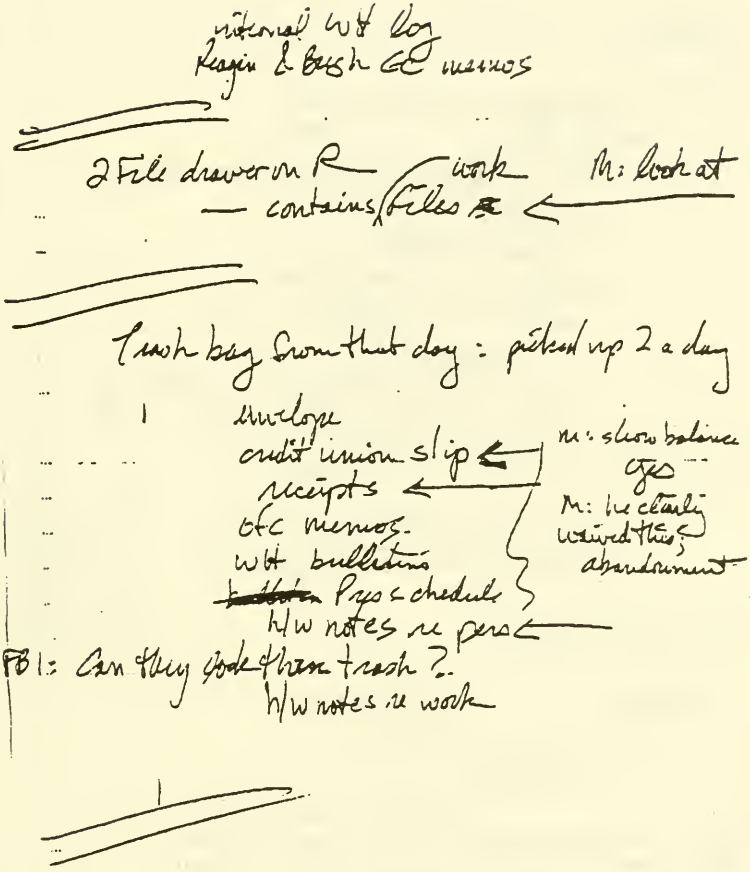
2573 on R = file drawers

left drawers

pls see → list of phone #s in wtt
#c slips from Feb ←
paper clips; scotch tape

* checks
* mtg book
blank envelopes
h/w note on ethics
bills for utilities, hse
invitation
Charles Schwab cards
anyone in DC? any rel(s)? → * "Rolodex" — phone dir of people from Ar
notes & corresp re wtt matters
inter-im phone dir
magazines
lists of wtt employees

07-11-95 12:27PM P011 #23


retrieval W# log
Regin & Bush GE memos
2 File drawers on R — contains files
work
M: look at
Trash bag from that day : picked up 2 a day
envelope
credit union slip
receipts
ofc memos.
W# bulletins
Psyc schedule
h/w notes re psyc
M: slow balance
yes
M: he clearly received this; abandonment
FBI: Can they go dig them from trash?
h/w notes re work

Credenza: on R

→ matters re first family
mostly files re GC matters
notebooks on prospective nominees
supplies
candlesticks
notebook re jud nominations
notebk re St. Justice
magazines
copy of Forward to bk Ron Kennedy
Fed Rules of Civ Pro
Bk on Mkt Liberalism

3/18 letter re posters of Pres.
card from friend

Credenza on L (w/ computer)

→ files
- mostly wk related

No. separate → Some pers files: tax returns
fmly & their
moving type
lease

only Q is
both w/ counsel?
don't give to
Tornbull

07-11-95 10:27PM P013 #23

Files on official business

notebook re prop in Ark ←

bk sh Wash DC

bk shelf =

books

TV

notebook on jud selection process

0.12 to give to family pictures & memorabilia → pictures

notebks on GC issues

healthcare task force files

speeches

articles

draft legislation

note pds re health care

m = what @ computer? Please review

End tables = blks, etc

Burn bag: picked up every day

H/W notes re GC issues
all wk reflected

FBI – must people leave notes

Igloo put together from 2
M2 – gunshot wd / close distance
autopsy rpt – 2 wks

Want to discuss pro efforts?
- Minutes of prep?

Department of Justice
Washington, D.C. 20530

514-4945

David Margolis
Chief
Organized Crime & Racketeering Section
Criminal Division
Phone 202-633-3618

670-5050
(202) 426-6060

PETER W. MARKLAND
United States Park Police

HEADQUARTERS
1100 OHIO DRIVE, S.W.
WASHINGTON, D.C. 20242

Z000140

- President's schedule
- Note about the "NW" article and the Columbia article
- Memo on change in summer clerk assgn.
- Dee's Press Briefing
- Congreo Daily
- Pres Trip Book
- WH Bulletin
- News Sum

- many credit card receipts

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

ted States Park Police	DID IT OCCUR	MO 07	DAY 20	YR 93	CASE NUMBER 93-30502
h Investigation	RECLASSIFICATION OF INCIDENT				

RESULTS OF INVESTIGATION

"Review of Documents from
Vincent Foster's Office"

On Thursday, July 22, 1993, in the afternoon the following persons met in the office of Vincent Foster to attempt to determine if he left a suicide note or if there were any other information that might have led him to take his own life. The very limited examination of the documents and notes were done by the Chief Counsel, Bernard Nussbaum. The following people were also present during this meeting: William Burton, Deputy Chief of Staff for the President, Clifford Sloan and Steven Neuwirth; Associate Legal Counselors, Michael L. Spafford; Attorney representing the Foster family, Captain Charles Hume and Detective Pete Markland; U.S. Park Police, Special Agents Scott Salter and Dennis Condon; Federal Bureau of Investigation, David Margolis, Deputy Assistant Attorney General Criminal Division; and Roger Adams; Department of Justice Attorney, Paul Imbordino and Donald Flynn; U.S. Secret Service.

(7)(A)

Originally, we had responded to the White House on Wednesday morning, July 21, to examine his office. As soon as we arrived and met with Inspector Dennis Martin of the U.S. Secret Service Uniform Division, we had requested a guard be posted at the door of the office to prevent anyone from removing anything from the office. As the day progressed we were not permitted to examine the room. We departed the White House sometime around 1830 - 1900 hours. The U.S. Secret Service log of persons entering the office after 1100 hours on Wednesday, July 21, showed Bernard Nussbaum entering the office at 1110 hours to remove a small photo and Cliff Sloan entering at 1834 hours same day to replace a bag of trash previously removed from Mr. Foster's trash can.

At 1315 hours, Thursday, July 22, all 13 of us entered the office of Vincent Foster. Bernard Nussbaum took a seat at Foster's desk. He was surrounded by his two associates, Sloan and Neuwirth, with Burton near his side and Spafford at the end of the desk.

36

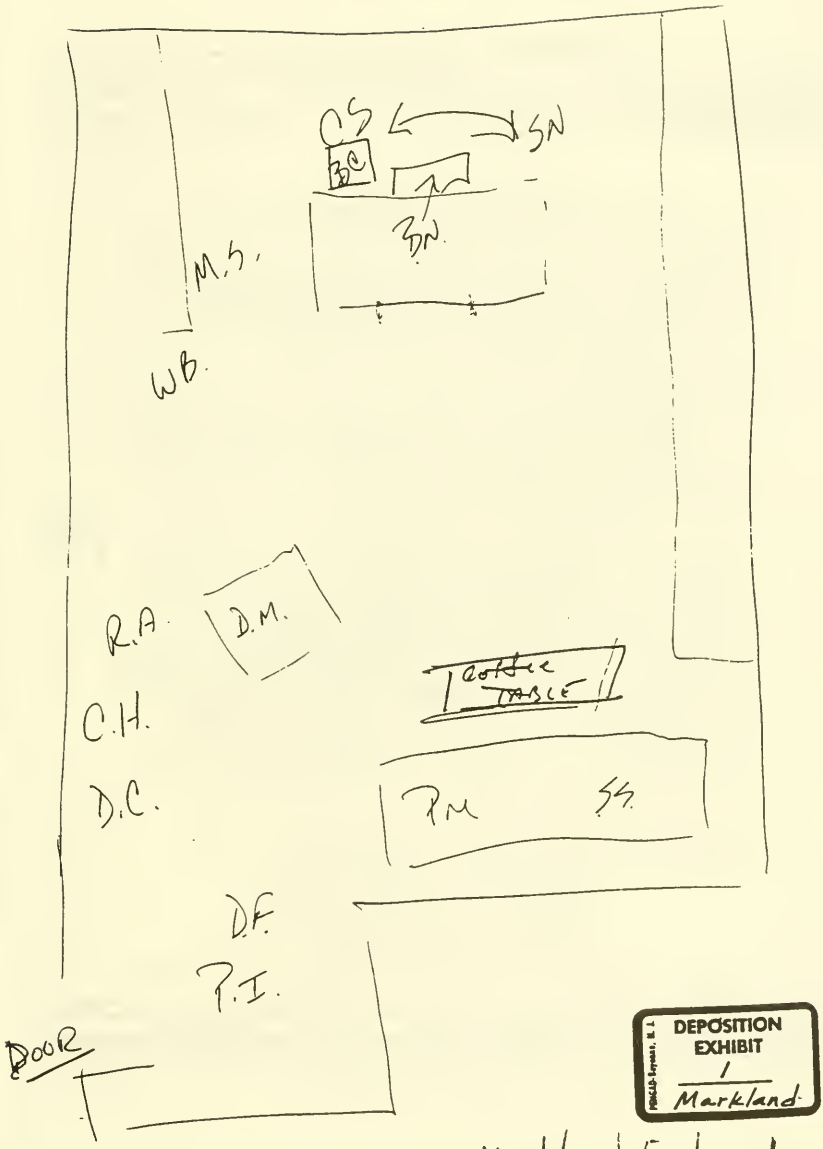
d States Park Police

Investigation

The eight law enforcement officers were gathered on the opposite side of the desk and room in a position where we couldn't examine any documents. Eventually all law enforcement were seated, either on the sofa or in chairs provide by the U.S. Secret Service. During the process Bill Burton left the office on at least two occasions and returned. Bernard Nussbaum did the actual review of the documents in a very hurried and casual fashion. There was some conversation between Nussbaum and Margolis as what constituted privileged communication. Nussbaum carried his interpretation of what was considered privileged to the extreme; one example was when he picked up a xeroxed copy of a newspaper article and declared that it was privileged communication even though it had been in the newspapers. Nussbaum would move papers about declaring what might be of interest to the police and what was strictly White House business.

Also, he decided what was Foster's personal papers and put those in a separate pile for the family attorney. Occasionally, Detective Markland or Margolis would ask him to place a certain note or document in a pile for possible police examination. At one point, Nussbaum pulled some papers out of a leather valise/briefcase that was sitting on the floor behind the desk. He put them on the desk and went through them. He then looked in the valise/briefcase again, but did not take anything out of it. A little later he moved the valise/briefcase away from the desk and placed it on the floor adjacent to the exterior wall directly behind him and the desk. At no time during the approximate one hour and 35 minutes we were in Foster's office where we allowed to examine any documents. At one point Special Agent Scott Salter got up to stretch and Clifford Sloan challenged him and asked him if he was standing up in an attempt to get a look at the documents.

The documents that Nussbaum had separated out were left in the office with the exception of the pile containing what Mr. Nussbaum determined to be personal papers of Foster. It was agreed between Margolis and Nussbaum that the family lawyer could take those papers and after getting approval from Mrs. Foster the police could examine them. The telephone logs were not turned over to us. We cleared the office at approximately 1450 hours. Margolis cautioned Nussbaum and his staff not to remove anything from the office. Nussbaum stated he could not leave the office secured any longer. The lock remained on the door that had been installed by the U.S. Secret Service on Wednesday, and Nussbaum was given the key after we cleared the office on Thursday at 1449 hours.



DEPOSITION EXHIBIT
1
Markland

Markland Ex. 1

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

United States Park Police

Death Investigation

RESULTS OF INVESTIGATION

Interview: Steven Neuwirth

Steven Neuwirth is an Assistant White House Counsel and the person reported to have found the note presumably written by Vincent W. Foster that was turned over to Detective L. J. Hegby on 7/27/93. The note had been discovered by Mr. Neuwirth during the packaging of Mr. Foster's personal effects on 7/26/93. On 7/29/93 at approximately 1130 hours, Steven Neuwirth was interviewed in Bernard Nussbaum's office by Detective Peter W. Markland and Captain Charles Hume. Mr. Nussbaum was also present and became a subject of the interview.

The following questions were posed to the two gentlemen regarding the note in question:

How could this note have avoided detection during the search of Mr. Foster's office by Mr. Nussbaum and other members of the White House Counsel's office in our presence on 7/22/93?

If the note was found on 7/26/93 why were the police not notified of it's existence until approximately 8:00 P.M. on 7/27/93?

Mr. Nussbaum stated it was his recollection that he removed materials from the briefcase, which remained on the floor, and placed them on the desk in front of him. He then went through the materials. He inferred that because of this he had missed the small scraps of yellow paper that obviously remained in the bottom of the briefcase. I informed Mr. Nussbaum that I was seated on the small couch directly across from and facing him and that I had a clear view of the briefcase when he removed it's contents, also that after the contents were removed I could see that he spread open the briefcase and visually inspected it as if to confirm that it was, indeed, empty. Mr. Nussbaum did not recall doing what I described. Captain Hume stated that he observed that Mr. Nussbaum handled the briefcase a third time when he slid it back towards the wall behind him in order to access the desk's file drawer. Mr. Nussbaum agreed with Captain Hume's recollection of sliding the case to the rear.

(7)(A)

Mr. Nussbaum then related that the following people were contacted to view the document before a determination could be made to disclose it to the U. S. Park Police:

Bill Burton (Deputy Chief of Staff)
Thomas F. McLarty (Chief of Staff)
Lisa Foster (wife of Vincent Foster)
Phillip Heymann (Deputy Attorney General)
Janet Reno (Attorney General)

PAGE 1 OF 2 PAGES

REPORTING OFFICER BADGE/ID DATE 8/2/93 INVESTIGATOR BADGE/ID SUPERVISOR BADGE/ID DATE 8/5/93

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

United States Park Police

Death Investigation

President Clinton was made aware of the existence of the document. Only Mr. Neuwirth and Mr. Nussbaum handled the document.

Mr. Neuwirth then related his recollection of the discovery of the document. He stated that he was in the process of gathering and packaging Mr. Foster's personal affects for delivery to the family when he turned the briefcase sideways in order to fit it into a box without causing damage to a photograph of the President with Mr. Foster's daughter, Laura. When he did this some torn yellow paper scraps fell out of the briefcase and he noticed handwriting on them. He then retrieved a number of other similar scraps from the bottom of the case and took them to the table in Mr. Nussbaum's office where he assembled the document which was, ultimately, turned over to Detective Megby.

Mr. Nussbaum was asked if he could clarify two entries on the handwritten note. "HRC" refers to the first lady; "MAKI" refers to an interior decorator employed by Mrs. Clinton.

Mr. Nussbaum stated that there were only "three or four" work related documents on Mr. Foster's computer.

Inquiries were made regarding the phone logs kept at the office. Mr. Neuwirth stated that they had been assembled and that they will review them and contact us.

The interview concluded at approximately 1230 hours.

(7)

PAGE 2 OF 2 PAGES

STATUS: OPEN SUSPENDED CLOSED BY ARREST EXCEPTION UNFOUNDED

REPORTING OFFICER BADGE/ID DATE 15 INVESTIGATOR BADGE/ID DATE 16 SUPERVISOR BADGE/ID DATE

July 22, 1993

REDACTED

Z 001104

First Family - SF 278

First Family - 1994 Income Tax Returns

First Family - General

HRC - CLE/Arkansas Law License

First Couple - Blind Trust

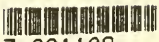
First Family - Arkansas Home

POTUS - Arkansas Office

WJC - Passport

WJC - Papers

First Family - SF278 pre-POTUS



July 22, 1993

REDACTED

Z 001118

-

First Family - SF 278

First Family - 1994 Income Tax Returns

First Family - General

HRC - CLE/Arkansas Law License

First Couple - Blind Trust

First Family - Arkansas Home

POTUS - Arkansas Office

WJC - Passport

WJC - Papers

First Family - SF278 pre-POTUS



RECORD TYPE: NOTE

CREATOR: Deborah L. Gorham (GORHAM_D) (WHO)

CREATION DATE/TIME: 27-JUL-1993 10:29

SUBJECT: TS

TO: Linda R. Tripp (TRIPP_L) (WHO)
READ: READ

TEXT:
Everything from his briefcase is missing.



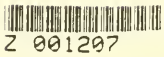
CREATOR: Linda R. Tripp (TRIPP_L) (WHO)

CREATION DATE/TIME:27-JUL-1993 10:30

SUBJECT: RE: TS

TO: Deborah L. Gorham (GORHAM_D) (WHO)
READ:READ

TEXT:
the little yellow stickie or was there more?



CREATOR: Deborah L. Gorham (GORHAM_D) (WHO)

CREATION DATE/TIME: 27-JUL-1993 10:33

SUBJECT: Top 5

TO: Linda R. Tripp (TRIPP_L) (WHO)
READ:READ

TEXT:
I do not know what else was in there but the bag is totally cleaned out except for one collar stay.



CREATOR: Linda R. Tripp (TRIPP_L) (WHO)

CREATION DATE/TIME:27-JUL-1993 10:33

SUBJECT: cs, too

TO: Deborah L. Gorham (GORHAM_D) (WHO)
READ:READ

TEXT:
it seems that whatever was uncovered was uncovered by , who summoned our boss, who then summoned BB, who then summoned H -- and whatever it was provoked a need for notetaking -- and had to do I presume with the burn bag -- I can't imagine that anyone as meticulous as this individual was, would have left anything he did not intend to be found.

Z 001209

RECORD TYPE: NONE

CREATOR: Deborah L. Gorham (GORHAM_D) (WHO)

CREATION DATE/TIME:27-JUL-1993 10:39

SUBJECT: TS

TO: Linda R. Tripp (TRIPP_L) (WHO)
READ:READ

TEXT:
What provoked COS to call BWN was the briefcase. Once BWN a



rrived. [redacted]target who went into VWF's office to get the Burn Bag But they must feel like a slapstick comedy by not returning the burn bag along with the briefcase.



RECORD TYPE: NONE

CREATOR: Linda R. Tripp (TRIPP_L) (WHO)

CREATION DATE/TIME:27-JUL-1993 10:41

SUBJECT: RE: TS

TO: Deborah L. Gorham (GORHAM_D) (WHO)
READ:READ

TEXT:
the three stooges. but why on God]'s green earth would the burn bag not have been sifted through immediately, not days later? And of course it would be secured along with all else and not left hanging around in an unsecured area?



RECORD TYPE: NOTE

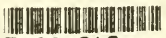
CREATOR: Deborah L. Gorham (GORHAM_D) (WHO)

CREATION DATE/TIME:27-JUL-1993 10:47

SUBJECT: TS

TO: Linda R. Tripp (TRIPP_L) (WHO)
READ:READ

TEXT:
On Wednesday, I told Bernie that VWF had placed shredded remnants of personal documents in the bag. On Thursday, I told Bernie in front of everybody that shredded remnants were in the bag.



RECORD TYPE: NOTE

CREATOR: Linda R. Tripp (TRIPP_L) (WHO)

CREATION DATE/TIME:27-JUL-1993 10:49

SUBJECT: RE: TS

TO: Deborah L. Gorham (GORHAM_D) (WHO)
READ:READ

TEXT:
i recall the shredded talk, because when we spoke to and he briefed us on comportment and interrogation, you mentioned that -- that was on WEDNESDAY evening, right? So it took until MONDAY to figure out it should be looked at? Christ. And we're the support staff???????????



INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, AUGUST 2, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:35 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Senator Bond, you have a statement that you would like to make.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

I regret that I have other commitments this morning that will prevent my being here throughout the morning, but I do want to follow up on a very troubling question that was raised many times in many ways yesterday and we were not able to resolve. It appears that Ms. Gorham, who was the Executive Assistant to Mr. Foster, was very meticulous, and she developed an index of the files in his office. Now, that index is mightily important when we are trying to ascertain if files from Mr. Foster's office somehow disappeared in the course of their handling, being moved by Mr. Nussbaum, Ms. Williams into the residence and on to the offices of Mr. Kendall, the private attorneys for the Clintons.

There is no way we are going to be able to determine whether all of the files that were in Mr. Foster's office have been properly produced unless we can have a clear indication of what was in those files. Ms. Gorham said that she produced an index. Yesterday she said in documents presented to her that one of them was in the format she used. Clearly, one was not in the format. These heavily redacted documents showed the date of July 22.

Ms. Gorham told us that she absolutely did not change that index after learning of Mr. Foster's death. I have therefore asked the staff of the Committee to obtain, from the White House, the information from the preserved computer records of Ms. Gorham, what was on the index on July 20th, and if it was changed, when it was changed and perhaps if there was any indication of who prepared the notes.

There are two possibilities. Either, number one, the information presented to us, the documents before us reflected changes in Ms. Gorham's index or—and, if so, we need to know when they were changed and try to determine what was on them prior to their being changed.

If those, in fact, were not Ms. Gorham's indices, then we still have not received a copy of the index that Ms. Gorham prepared. It so happens, Mr. Chairman, in early 1993 I was the Ranking Member on Treasury/Postal and one of the first supplementals we provided for the White House was $13 million to establish a backup system so that all computer records for the White House could be preserved, as required under the Armstrong ruling. This was one of the first requests and we were very happy to accede to it.

Having provided that money to provide backup, I'm confident that there is a system which can produce a record of what Ms. Gorham put on the index and when and if it were changed. I believe that will help us a great deal in trying to determine what was in the files in Mr. Foster's office at the time of his tragic suicide.

The CHAIRMAN. Senator, pursuant to your request last evening, I think that both counsel joined in a request—I don't know whether written or oral—to the White House to furnish them with the hard drive. We'll keep you and the Committee informed concerning those developments, but I understand there has been——

Senator BOND. I thank the Chairman and I thank the staff.

The CHAIRMAN. Our first witness is Louis G. Hupp, a fingerprint specialist with the Federal Bureau of Investigation.

Mr. Hupp, how are you? We have agreed in the interest of time—Mr. Hupp, let me swear you in, first. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. HUPP. I do.

The CHAIRMAN. Mr. Hupp, we thank you for coming in. If you have any statement that you would like to give or if you want to give us your background—and we agreed that both counsel will examine Mr. Hupp, for 15 minutes each and then we'll proceed with the next panel. So, Mr. Hupp, if you have a statement, we would be pleased to receive it.

SWORN TESTIMONY OF LOUIS G. HUPP
FINGERPRINT SPECIALIST
FEDERAL BUREAU OF INVESTIGATION

Mr. HUPP. I don't have a statement, per se, but I entered on duty with the FBI in 1965 and have progressed through various levels of the fingerprint department to include student classifier, searcher, up to the rank of assistant supervisor. Then, in 1975, I was afforded an opportunity to go into the latent fingerprint section, which deals primarily with crime scene evidence or evidence of an evidentiary nature. I've been employed in the latent fingerprint section since 1975.

To date, I have taught numerous schools in the field of fingerprint identification throughout the United States. I have taught schools in Mexico City as well as Athens, Greece in the field of fingerprint identification.

The CHAIRMAN. So it's safe to say that you are an expert in the area of fingerprinting and fingerprint identification?

Mr. HUPP. Yes, sir.

The CHAIRMAN. We're pleased to have you here with us, Mr. Hupp.

Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Good morning, Mr. Hupp.

Mr. HUPP. Good morning.

Mr. JOHNSON. You've described a long work experience with the FBI. What is your job title today, sir?

Mr. HUPP. Fingerprint specialist.

Mr. JOHNSON. I see. As a fingerprint specialist, I take it you are not a special agent in the FBI, am I correct about that?

Mr. HUPP. That is correct.

Mr. JOHNSON. Is part of your job to analyze documents and things and to determine whether or not there are any latent fingerprints on them?

Mr. HUPP. That is correct.

Mr. JOHNSON. Could you tell us, just for our information, what a latent fingerprint is?

Mr. HUPP. The undersides of the palms of the hands, the fingers, as well as the soles of the feet are covered with raised portions of skin which we call friction ridges. These friction ridges are lined with sweat pores which normally exude perspiration and keep the ridges or lines moist most of the time. When these tracings or outlines come into contact with something, such as this piece of wood or a piece of paper or another item, these tracings or outlines are usually transferred to that item, but generally remain invisible to the naked eye and require some form of processing, either through chemicals or with powders, to make it visible to the naked eye.

Mr. JOHNSON. When you analyze a document or things for latent fingerprints, do you use a particular set of procedures routinely?

Mr. HUPP. Yes, I do.

Mr. JOHNSON. Could you tell us what those are?

Mr. HUPP. It depends on the type of evidence we have. Generally we break evidence into two different forms. It's either a porous piece of evidence or it's nonporous. Now, a porous piece of evidence would be something like this piece of paper or this envelope in that the latent prints are absorbed into it and may require a little different processing than normal, but generally I would take this piece of paper and initially examine it with a laser in order to look for inherent fluorescence. After that I would process it with a chemical called DFO or 1,8-diazfluoren9-one. This chemical reacts with amino acids that are present in sweat. A laser is required in order to view them.

Also, I might apply a process we use called iodine fuming which reacts with the fats or the oils that are present in the sweat. Then, after I had finished with the DFO, I would proceed with a chemical called ninhydrin. This also reacts with amino acids that are present in sweat and causes them to turn up usually a reddish purple color. At the conclusion of that I would use a chemical called physical developer, which is actually a three-stage development process. Among the things in it are silver nitrate, which reacts with the

salts present in the sweat and also reacts with the fatty acids that are present in the oil. That would be for the porous type.

If we went into the nonporous type, such as this piece of wood or the glass, it would be a little different scenario. We would first examine it again with the laser, which is nondestructive. Then we would process it with cyanoacrylate, or some people refer to it as Superglue. When Superglue is heated, it gives off a vapor which attaches to the sweat that's present on the fingers. When they leave it on the glass like that it will attach only to the fingerprints. They will develop and turn a white crystalline color.

Now, we can process, photograph those and compare from those, or I could use a chemical stain. There are several on the market. We use one called Ram. This renders it fluorescent. You view it back under the laser and it causes very weak latents to fluoresce. Last but not least, the tried and true method, powdering it with a brush, which you see on TV quite often.

Mr. JOHNSON. Thank you. Let me focus on the processes that you have described which you use with respect to porous materials. I take it you do all of those processes. Even if the laser examination turns up one or more latent prints, you continue with the chemical processing?

Mr. HUPP. Yes, the steps that we follow are designed so that if I develop a latent print with the laser, and I proceed on and use iodine, I could develop additional prints and maybe not develop the laser print. With each chemical, if we use them in this strict process sequence, we're able to develop latent prints with every possible process.

Mr. JOHNSON. At the conclusion of the process you are confident that you would have recovered all of the latent prints that are possible at least to recover from porous material?

Mr. HUPP. Yes, that would be possible at this point in time.

Mr. JOHNSON. Mr. Hupp, let me turn now to an examination that you conducted in July and August 1993, and let me just state for clarity and also to remind both of us that, by agreement with the Independent Counsel, you would testify here today only about those analyses and evaluations that you conducted in late July and early August 1993. So if you'll confine your responses to my questions to that timeframe, I think we'll stay within the realm of that agreement.

Did there come a time in late July 1993 when you were asked to analyze the scraps of paper that had been found in Mr. Foster's briefcase?

Mr. HUPP. Yes.

Mr. JOHNSON. What were you asked to do?

Mr. HUPP. I was asked to examine the scraps of paper for the presence of latent prints and then I was advised to compare them with a group of individuals whose names were supplied to me.

Mr. JOHNSON. Let me ask, if I could, please—direct your attention to the screen—that FBI number 81 be placed on the screen. Mr. Hupp, is this the list of individuals who you were asked to compare the latent prints with?

Mr. HUPP. Yes, it is.

Mr. JOHNSON. At the top of that list it says "Named Suspects," but that's just an FBI form, these people aren't suspected of anything, just the names have to go somewhere, am I right about that?

Mr. HUPP. That is correct, sir.

Mr. JOHNSON. Just to be clear, it was Mr. Neuwirth, Mr. Nussbaum, Mr. Burton, Mr. Foster and Mr. Sloan who you were asked to compare with, am I right about that?

Mr. HUPP. That is correct.

Mr. JOHNSON. Let me also ask, Megan, that you place up now FBI number 80. Perhaps you could zoom down to the handwritten section at the bottom of that page. Have you seen this document before, Mr. Hupp?

Mr. HUPP. Yes, I have.

Mr. JOHNSON. Is that your handwriting that's on this document?

Mr. HUPP. That is correct.

Mr. JOHNSON. It indicates at the top that the specimen had been received on July 30, 1993. Is that your recollection?

Mr. HUPP. That is correct.

Mr. JOHNSON. Could you tell us, please, what the handwritten notes at the bottom indicate?

Mr. HUPP. These were notes that were placed there by me indicating the exams that I conducted on those particular pieces of paper.

Mr. JOHNSON. The first one says "laser exam no lats." I take it that means that no latent fingerprints were found with the laser examination?

Mr. HUPP. That's correct.

Mr. JOHNSON. What does the next entry mean?

Mr. HUPP. It means I processed it with the chemical DFO and when I viewed it under the laser I detected a print, and I sent it to be photographed.

Mr. JOHNSON. I'm sorry, could you say the last thing again?

Mr. HUPP. Once I detected the latent print, I sent it off to be photographed by our photographic laboratory.

Mr. JOHNSON. What kind of print did you detect?

Mr. HUPP. There was a palm print present on one piece of paper.

Mr. JOHNSON. Just technically, how do you know it was a palm print?

Mr. HUPP. Due to the size and the direction the ridge flows and everything. It's just from experience.

Mr. JOHNSON. Are you able to tell from the particular print that you found which palm and what the position of the palm was?

Mr. HUPP. Generally we have an indication. This one was strictly straight ridges, there was not a real indication. We knew it was probably at the base of the palm, but it could have been either palm.

Mr. JOHNSON. Perhaps just for our understanding you could illustrate using any piece of paper in front of you how you surmised that the palm had been placed on the scraps of paper.

Mr. HUPP. The best that I could determine was the paper was down in some way and it was placed—the area was something similar to this.

Mr. JOHNSON. Thank you. You seem to be indicating that the palm was placed on the lower left-hand portion of the paper, am I correct?

Mr. HUPP. It could be the lower left. I'd rather prefer to say the left-hand side. We have an indication in a photograph, we know that it came from the left side of the paper, but whether it's top or bottom or middle we really don't know.

Mr. JOHNSON. I think you said before that the palm print was only on one of the scraps of paper. Do I have that correct?

Mr. HUPP. That is correct.

Mr. JOHNSON. Was there any writing on that scrap of paper?

Mr. HUPP. No, there was not.

Mr. JOHNSON. Now, Mr. Hupp, were you able to identify in your July 30th analysis whose palm print that was?

Mr. HUPP. No, I was not.

Mr. JOHNSON. Why not?

Mr. HUPP. I had no palm prints available for the individuals who had been named to me.

Mr. JOHNSON. Now, we earlier referred to FBI number 81, which identified the individuals. Did you have fingerprints available for those individuals?

Mr. HUPP. I had fingerprints, as memory serves me, for four of the individuals, but there's one I'm not certain about.

Mr. JOHNSON. Which one are you not certain about?

Mr. HUPP. Mr. Burton. That should be in my—no, I merely stated I didn't have palm prints at that time.

Mr. JOHNSON. To state the obvious, having a fingerprint doesn't help you identify a palm print?

Mr. HUPP. That is correct.

Mr. JOHNSON. Just for clarity in the record so that there isn't any suggestion here otherwise, I realize that you're not able to testify about this today, Mr. Hupp, but we have learned through other deposition testimony that Mr. Nussbaum has been informed that that palm print is his palm print. I'm not asking you to comment on that, but I'm stating it just so we didn't move off of this with the suggestion that that would be inappropriate about whose print that was on the paper.

One of the things the FBI agents asked you to do was to try to identify whether or not the palm print had been placed on the document before or after it was torn into pieces; is that correct?

Mr. HUPP. That is correct.

Mr. JOHNSON. Were you able to say one way or the other whether it was placed before or after it was torn into pieces?

Mr. HUPP. No, I was not.

Mr. JOHNSON. Could you tell us why you're not able to say?

Mr. HUPP. It appears on one piece of paper, and it does not go beyond the torn lines, the smaller area, it's confined more or less to the center area. There is no indication that it went across, so there would be no way to tell if it was placed there as a small piece of paper or as a large piece of paper. There is just no way to determine that.

Mr. JOHNSON. There's just no way to know that. Now, did you find any latent prints on any other of the scraps of paper?

Mr. HUPP. I found no other latent prints of value on any of the paper items. Now, when I say "of value" I mean that it contained sufficient identifying characteristics which would allow me to make an identification. There may have been some tracings or outlines. I don't remember a great deal of them, there wasn't very many, if any at all.

Mr. JOHNSON. You have no recollection one way or the other today about whether there were partial prints or nonusable prints on other of the scraps of paper?

Mr. HUPP. No.

Mr. JOHNSON. OK. Now, I take it that, just, I hope, to summarize the obvious, you didn't find Mr. Foster's fingerprints on any of the scraps of paper?

Mr. HUPP. That is correct.

Mr. JOHNSON. Did that strike you at the time as unusual?

Mr. HUPP. No, it did not.

Mr. JOHNSON. Can you explain why not?

Mr. HUPP. There are many times that we examine many documents for the presence of latent prints and we don't find them. This is not something that happens every time. There are several times that I've examined documents and not found latent prints at all.

Mr. JOHNSON. So even though we know that Mr. Foster wrote the handwritten note that you examined in July 1993, it's not surprising to you that you wouldn't find his fingerprints on that document?

Mr. HUPP. That's correct.

Mr. JOHNSON. Does that have to do with lots of variables, for example, the perspiration characteristics of the people who may have touched the document and that sort of thing?

Mr. HUPP. That's correct.

Mr. JOHNSON. Thank you very much. Mr. Chairman, I don't have any further questions.

The CHAIRMAN. That's interesting. So you are saying that if someone handles a document, you may not be able to come up with prints depending on, for example, the perspiration characteristics of that person?

Mr. HUPP. That's correct.

The CHAIRMAN. Very good. Senator Sarbanes. Richard.

Senator SARBANES. Mr. Ben-Veniste.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

To follow up on that point, Mr. Hupp, among the variables that would determine whether an individual might leave a fingerprint or not would be whether that individual sweats profusely or not?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. So if an individual were to have dry skin, it would be less likely for him to leave a fingerprint; is that correct?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. Similarly, if an individual were to wash and dry his hands before handling a piece of paper, would that also be a variable that would determine whether or not a print might be left on the paper?

Mr. HUPP. Certainly would.

Mr. BEN-VENISTE. What about the conditions under which the writing or the handling was made, for example, the temperature and humidity of the room, would that be an important variable?

Mr. HUPP. We know that in cooler weather people do not tend to perspire as much, so, yes, I would say if it was cool it would be a deciding factor.

Mr. BEN-VENISTE. So all of those variables would determine whether a particular individual might leave fingerprints, and there are some individuals who are more likely to leave prints and others who are less likely; is that correct?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. You, yourself, I think from recollection of your deposition, are an individual who is less likely to leave fingerprints; is that so?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. So practicing on yourself is probably not a very productive avenue for you?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. To sum up on that, it is entirely without particular relevance that you were not able to find Mr. Foster's fingerprint on this note which handwriting analysts have concluded is clearly Mr. Foster's handwriting?

Mr. HUPP. That is correct. It doesn't surprise me.

Mr. BEN-VENISTE. Now, with respect to the two surfaces you talked about, a hard surface and a porous surface, a hard surface might be this wooden platform or it might be a glass-top table. If you were to leave prints on such a hard surface they would be easy to detect, but would they be durable?

Mr. HUPP. No.

Mr. BEN-VENISTE. Why wouldn't they be durable or last for very long?

Mr. HUPP. On the nonporous surfaces, the latents lay on the surface of the item itself. By merely brushing it or wiping it, you could wipe those away.

Mr. BEN-VENISTE. You could wipe those fingerprints off. Now, with respect to a piece of paper, a porous substance, once fingerprints are left on such a porous material, such as paper, can they be removed?

Mr. HUPP. Not removed, per se. You could conceivably handle a piece of paper numerous times in the same area and render it useless by merely placing latent on top of latent, but to wipe it away, no.

Mr. BEN-VENISTE. In other words, you could smudge it and you could obscure it, but if somebody were to wish to remove it, would that be possible without actually destroying the paper fiber itself?

Mr. HUPP. No.

Mr. BEN-VENISTE. You could detect if somebody had tried to do that with respect to this note?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. I take it you found no such alteration or obliteration of any print, either by way of one print on top of another or by way of an attempt to remove material from the paper?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. Now, with respect to the question of whether you could determine whether the fingerprint or the palm print that you were able to identify on the paper was placed on that paper before or after the paper was torn, is it fair to say, Mr. Hupp, that everything that you were able to detect about that print is consistent with the print being placed on the paper subsequent to the time the paper was torn?

Mr. HUPP. I can't say that because it could have been placed—that limited area could have come in contact with the full sheet of paper and it was merely torn around it. To say that it was placed on there afterwards, I can't——

Mr. BEN-VENISTE. Listen to my question carefully if you would. Did everything that you were able to determine lead you to conclude that it was consistent, that is, entirely plausible that the print was left subsequent to the time the paper was torn?

Mr. HUPP. Yes, I could agree to that.

Mr. BEN-VENISTE. Now, with respect to the print itself, did you take a photograph of that print?

Mr. HUPP. Yes, I did.

Mr. BEN-VENISTE. Is it possible to put that on our Elmo machine so that you can—do you have it in front of you?

Mr. HUPP. Yes, I do.

Mr. BEN-VENISTE. While they're attempting to do that, can you tell us, again, at what part of the note did you find this print?

Mr. HUPP. The only thing that I can indicate to you is that it came from the extreme left-hand side of the paper. We see a hole-punched hole in the piece of paper which would indicate it could have been top, middle or bottom, but other than that, that's the best I can do.

Mr. BEN-VENISTE. Now, you see that the edge of the print goes beyond the top of the hole and right to the end of the paper; is that correct?

Mr. HUPP. Yes, it stops short of the edge of the paper and does not cross the tear line.

Mr. BEN-VENISTE. Along the left where that dark area is, is that a dark area that is caused by the chemical treatment of the paper?

Mr. HUPP. That would be fluorescence.

Mr. BEN-VENISTE. Now, to reiterate what Mr. Johnson has said, we have learned from Mr. Nussbaum and his attorney that after the individuals who handled the note gave palm prints voluntarily to the Independent Counsel, that it was determined that the palm print that you have identified is Mr. Nussbaum's. It is our understanding that based on instructions given to you through the chain of command at the FBI, that you will not be permitted by Independent Counsel to provide testimony regarding the tests that you conducted matching up the known palm prints once they were collected with the palm print which is displayed on the screen. Is that correct, sir?

Mr. HUPP. If I may, I have been requested by the Office of the Independent Counsel to advise this Committee that the Independent Counsel objects to any questions which concern the OIC investigation on the grounds that such testimony may hinder or impede the Independent Counsel's pending investigation.

I've also been informed by the OIC that the Chief Counsel and Minority Counsel for this Committee have agreed to this limitation. I therefore ask that you direct any request for the results of such examination to the Independent Counsel and not place me in a position of either violating the request of the Independent Counsel or refusing to answer a question from this Committee.

Mr. BEN-VENISTE. It's not our intention to do that. I was merely stating on the record what the ground rules, in fact, were.

Senator SARBANES. Mr. Chairman, I think we should reassure Mr. Hupp that the ground rules under which he came will obviously be observed.

The CHAIRMAN. We're not going to press you and if you feel that questions from any of the counsel would impinge on that agreement, just let us know.

Senator SARBANES. But I do think that, as he said there, the inquiry should be directed to the Independent Counsel. I do think we should undertake to do that just as we have with respect to trying to get the results of the lie detector tests in the case of Ms. Williams.

The CHAIRMAN. I'll ask both counsel to join in that request on our behalf.

Mr. HUPP. I have no objection and the FBI has no objection to answering the question, but it's on the advice of the Independent Counsel they have requested us not to.

The CHAIRMAN. Mr. Hupp, we're not going to place you in that position. This is just an effort to try to get the facts within the ground rules, and we may not always agree with the Independent Counsel. I think he could have furnished us some more information, but we will pursue that matter with him. We certainly understand the limitations under which you testify and we respect them.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Yes, let me conclude by clearing up one thing in the record that is reflected in the documents we have received. Exhibit 52, if we may put that up for you, is a communication dated August 2, 1993 that makes reference to a July 30th communication. Do you have that in front of you, Mr. Hupp?

Mr. HUPP. Yes, I do.

Mr. BEN-VENISTE. That references the fact that the questioned material with respect to the note was delivered in 27 pieces of torn paper bearing original handwriting. You see that?

Mr. HUPP. Yes.

Mr. BEN-VENISTE. Now, if we would put up Exhibit 54. Do you have that in front of you?

Mr. HUPP. Yes, I do.

Mr. BEN-VENISTE. Exhibit 54, which is also dated August 2, 1993, reflects that there are 28 pieces of torn paper bearing original handwriting.

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. I guess we were operating here for a long time in this Committee under the assumption that the note was in 27 pieces. Can you tell us which is the correct count?

Mr. HUPP. I received 28 and returned 28 pieces of paper back to the submitting agency.

Mr. BEN-VENISTE. Can you explain for us, and I'm sure you can, the discrepancy between the fact that the FBI report, marked as FBI Exhibit 65, references 27 pieces?

Mr. HUPP. When we receive evidence in the laboratory division, we account for what is actually there. Referring back to what was mentioned was submitted, many times there says no mention of count. What we place on our report and on our worksheets is the count we had at that particular time. Now, whether there were 27 pieces and one of them became detached, it was merely hanging on by a thread, I have no recollection, but there were 28 pieces that I received, and I did return 28 pieces.

Mr. BEN-VENISTE. You would be more concerned if what you counted was 27 and the invoice said 28?

Mr. HUPP. That is correct.

Mr. BEN-VENISTE. But under these circumstances you're quite sure that what you looked at was in 28 pieces?

Mr. HUPP. To the best of my recollection, yes.

Mr. BEN-VENISTE. If there was inadvertence or some other problem with respect to the counting, that is cleared up by the fact that you counted them personally and you know there to be 28 pieces?

Mr. HUPP. That's correct.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Mr. Johnson, you have a short——

Mr. JOHNSON. I do, Mr. Chairman. Thank you.

Mr. Hupp, I just have really one question to follow up on some things that Mr. Ben-Veniste raised. The question has been raised whether or not the palm print that you've analyzed was placed on the scraps of paper or the document before or after it was torn into what you count as 28 pieces. Mr. Ben-Veniste asked whether in your analysis you were able to conclude that it is at least consistent with your analysis that the palm print was placed on the scraps of paper after they were torn up.

Mr. HUPP. I think "plausible" would be the word. No actual determination could be made. It's plausible it could have been placed there after the paper was torn up, but it also could have been placed there as a whole piece.

Mr. JOHNSON. I take it it's equally as consistent with your analysis that it was placed on there before——

Mr. HUPP. Yes, either way.

Mr. JOHNSON. Thank you, sir.

The CHAIRMAN. Mr. Hupp, thank you so very much for your cooperation. I appreciate it.

Mr. HUPP. Thank you.

The CHAIRMAN. Our second panel, Mr. Philip Heymann.

Mr. Heymann, do you want to continue to stand just for a moment. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. HEYMANN. I do.

The CHAIRMAN. Thank you, Mr. Heymann.

Mr. Heymann, let me thank you for your cooperation and for being here today. Let me also thank you for the statement which you have submitted to the Committee. I've just read it and it is thoughtful and certainly in the tradition that Phil Heymann has al-

ways brought to the justice system. I want to commend you for the manner in which you have always carried yourself throughout the years and the great reputation that you have justly earned and deserved. I'm sure that you want to read that statement and we would be glad to hear it before we open the hearing.

SWORN TESTIMONY OF PHILIP B. HEYMANN
FORMER DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

Mr. HEYMANN. Thank you very much, Senator D'Amato.

Mr. Chairman and Members of the Committee, I greatly appreciate the opportunity to make a short opening statement. I think it will help the Committee to understand my thought processes at the time of Vince Foster's death and will put my answers in a useful context. I managed the efforts of the Department of Justice to assist the investigative agency responsible in this case, the Park Police assisted by the FBI.

I believed then and continue to believe that there was one central question that had to be addressed with regard to the handling of files in Vince Foster's office. That question was: Who should determine—who should determine what documents would be made available to the investigators. I thought White House Counsel should not decide, largely alone, whether particular documents were relevant to the Foster investigation; whether executive privilege attached to any particular document; and whether the need of the Park Police and the Federal Bureau of Investigation for a particular document as part of their investigation justified overriding any such privilege.

"Who should decide" is not a question of personal trust but a matter of assuring that there is a trustworthy process. It isn't a technical, legal question but an issue as to the necessary conditions for maintaining the credibility of Federal law enforcement and of the Presidency. I thought that for the White House Counsel's Office to make these decisions largely by itself, as it did, was simply not an acceptable way of addressing them. A player with significant stakes in the matter cannot also be referee.

I'd like to be as clear as possible about all this.

Investigations involving high-level White House or congressional people are not new to me. I played a significant role in the Special Prosecutor's Watergate investigation and in the investigations during my tenure as Assistant Attorney General in charge of the Criminal Division in the Carter Administration of the Carter Warehouse, Robert Vesco's charges against the Democratic party and White House officials, Billy Carter, Bert Lance, Hamilton Jordan and others. I shared with William Webster, then Director of the FBI, the ultimate responsibility for the ABSCAM investigations involving a number of Members of Congress. I have been a witness at congressional reviews of a number of such investigations, both in the Senate and in the House.

A few lessons were very much in my mind when I learned of Vince Foster's death. An investigation that requires access to White House papers is always difficult because there are legitimate investigative claims by law enforcement that must somehow be reconciled with recognized and legitimate claims of confidentiality by

the White House and the President. The reconciliation is not an abstract process; it requires balancing interests document by document. Not every document is equally entitled to protection in terms of confidentiality. Not every document is essential or even relevant to an investigation.

The obvious stakes in reconciling these competing demands are: Getting the truth in the investigation; and not defeating any of the purposes of executive privilege, particularly allowing frankness in White House discussions and protecting national security secrets.

There is another stake that is considerably less obvious, but at least equally important. The credibility of Federal law enforcement as willing and able to pursue the truth wherever it may lead is, I believe, a great national asset. I have met or worked with law enforcement officials from dozens of countries on five continents. I don't know another nation where the independence of law enforcement is so well established and so broadly accepted as it is here. But this must be preserved and carefully protected.

The Department of Justice was not entitled to subpoena all the documents in Vince Foster's office. The general presumption of confidentiality accepted in United States v. Nixon [the Watergate case forcing President Nixon to turn over papers and tapes] was overcome in that case only by the Special Prosecutor being able to identify specific documents as relevant and essential to the criminal investigation. We knew of no specific documents in Foster's office that would be relevant or essential to determining whether he had killed himself. But the fact that a court would not have intervened does not leave the question of a fair and credible process just a matter of choice for an Administration.

The Federal law enforcement authorities have a responsibility to assure a process that credibly promises objectivity when high officials are part of the investigation. To keep this promise of objectivity, even in a case that showed all the early signs of being a suicide, the White House Counsel could not be the one to decide what documents would be shown to the investigators and which would be retained or distributed as irrelevant to the investigation or as privileged despite potential usefulness to the investigation.

What I was trying to do during the late days of July 1993 was to develop a reasonable, fair and credible way to assure that, in an investigation of what seemed even then to be a suicide, the investigators had any information that might be important to their investigation, without disregarding legitimate claims of the White House to confidentiality. I knew then that the stakes included preserving the remarkable credibility of Federal law enforcement with regard to a willingness to take an investigation wherever it may lead. As the days wore on, I knew that we were all likely to spend days and weeks in congressional hearings if we did not carefully maintain the credibility of our investigation.

That, Senator D'Amato, is the background of my involvement in the events about which I shall testify. Thank you.

The CHAIRMAN. Thank you, Mr. Heymann.

Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you.

Mr. Heymann, you're currently a Professor of Law at Harvard University; is that correct?

Mr. HEYMANN. Yes, Senator.

Senator SHELBY. You teach criminal law?

Mr. HEYMANN. Yes, Senator.

Senator SHELBY. What else do you teach?

Mr. HEYMANN. I teach a variety of courses that are in that area. I teach about terrorism. I teach issues that are disturbing prosecutors and defense attorneys at any particular time. All are in the criminal area.

Senator SHELBY. In the Carter Administration, you related that you were in charge or the head of the Criminal Division in the Justice Department; is that correct?

Mr. HEYMANN. That's correct.

Senator SHELBY. Your role was as an Assistant Attorney General in charge of the Criminal Division, would that be a proper——

Mr. HEYMANN. That's correct.

Senator SHELBY. After you left the Carter Administration, did you return to Harvard Law School?

Mr. HEYMANN. Yes.

Senator SHELBY. You have been there during that tenure until you came back early in the Clinton Administration?

Mr. HEYMANN. That's correct, Mr. Shelby.

Senator SHELBY. When you came back in the Clinton Administration, did you come back as the Deputy Attorney General of the United States?

Mr. HEYMANN. Yes.

Senator SHELBY. What's the role, basically, of the Deputy Attorney General of the United States?

Mr. HEYMANN. I think I had some disagreements with the Attorney General on that, Senator Shelby.

Senator SHELBY. OK, what was your conception of the role or what was the historic conception of the role?

Mr. HEYMANN. I should add that I teach about managing in Government at the Kennedy School, where I'm teaching right this minute. I think the role of Deputies, the historic role or the general role of Deputies in almost every Department is to manage the internal operations of the Department while the Secretary or the Attorney General discharges a lot of responsibilities with regard to Congress and the public. I don't mean to make the Cabinet officer simply someone who is outside, but outside and inside are the way most people think about it.

Senator SHELBY. But if you were in a corporate setup, would it be something like the chief operations officer——

Mr. HEYMANN. Something like that, Senator Shelby.

Senator SHELBY. —as opposed to a chief executive officer? The president of a company as opposed to the chairman more or less?

Mr. HEYMANN. That's right, Senator Shelby.

Senator SHELBY. Were you involved as the Deputy Attorney General of the United States on July 20, 1993?

Mr. HEYMANN. Yes, sir.

Senator SHELBY. Did you know Vince Foster, who was a Deputy Counsel at the White House?

Mr. HEYMANN. I knew him very little, Senator Shelby. He had been one of the four people who had interviewed me about being Deputy Attorney General. I don't know whether I'd seen him in the meantime or not. I'd seen him 2 weeks before his death at a party. I knew him a little.

Senator SHELBY. But you knew who he was in his role and everything?

Mr. HEYMANN. Yes, I did.

Senator SHELBY. When did you hear of Mr. Foster's death?

Mr. HEYMANN. I believe I did not hear of it until the day after his death, Wednesday the 21st.

Senator SHELBY. What was your first reaction?

Mr. HEYMANN. I was——

Senator SHELBY. Personally and then professionally.

Mr. HEYMANN. I was not a close friend——

Senator SHELBY. Sure.

Mr. HEYMANN. —but he seemed like an extremely decent, kind, honorable man, and I felt very badly about it.

Senator SHELBY. Sure. Did you, in your position as a Deputy Attorney General of the United States, get involved in the investigation of the Foster death in some capacity, in your capacity?

Mr. HEYMANN. In some capacity, yes, Senator Shelby.

Senator SHELBY. That was the capacity of your official position, was it not?

Mr. HEYMANN. Yes, Senator Shelby.

Senator SHELBY. How did you get involved?

Mr. HEYMANN. I can't remember how I began negotiating on that day, Wednesday the 21st——

Senator SHELBY. OK.

Mr. HEYMANN. —the involvement of two senior prosecutors.

Senator SHELBY. Was that Roger Adams and David Margolis?

Mr. HEYMANN. That's Roger Adams and David Margolis.

Senator SHELBY. What were their positions in the Justice Department?

Mr. HEYMANN. Both of them were then temporarily on detail to my office as Deputy Attorney General. They were long-time career prosecutors in the Criminal Division of the Justice Department.

Senator SHELBY. A lot of experience?

Mr. HEYMANN. Many, many, many years of experience.

Senator SHELBY. Did you determine or was it determined that Roger Adams and David Margolis would be sent over to the White House to review documents in the Foster office for relevance and privilege?

Mr. HEYMANN. Yes. I knew that there would be a serious problem of investigation of documents as to which there might be a claim of privilege in connection with investigation of the suicide. I knew that the Park Police could not be expected to handle this on their own. It's quite an esoteric area, and it's also one in which you want to be sure that the investigators aren't too deferential of the high position of White House aides.

So I did two things that day: One, I asked the FBI to join with the Park Police—I think the Park Police had already requested

that themselves—and I offered, and it was accepted, the assistance of two senior, career, long-term prosecutors, Adams and Margolis, to help in the process of deciding what documents would be made available.

Senator SHELBY. Mr. Heymann, did Roger Adams and David Margolis have high security clearances?

Mr. HEYMANN. I'm sure that Mr. Margolis would have a very high security clearance and I think that Mr. Adams would, but I can't tell you for sure, Senator Shelby.

Senator SHELBY. Did you make notes of what was going on from your perspective regarding the Foster investigation?

Mr. HEYMANN. I did not make personal notes at that time. When I was about to leave the Department of Justice, shortly after the Independent Counsel, then Bob Fiske, was appointed——

Senator SHELBY. Yes, sir.

Mr. HEYMANN. —I sat down with Mr. Adams, Mr. Margolis and my own Secretary who had the office files.

Senator SHELBY. Was that Cynthia——

Mr. HEYMANN. Cindy Monaco was a Special Assistant. Pat Binninger was my Secretary. I tried to put together as best I could what the events were—this was in early February 1994—in order to be prepared, I think primarily for testimony before the Independent Counsel. I had urged the Independent Counsel that he had to be responsible for an investigation here, among other things.

Senator SHELBY. If we put those notes on the screen, page by page, would you recognize them in your—is this done in your handwriting?

Mr. HEYMANN. That's my handwriting.

Senator SHELBY. If I could run through some of this, you made these notes when?

Mr. HEYMANN. In early February 1994.

Senator SHELBY. These were your recollections and reflections of the events that you were involved in dealing with the Foster investigation; is that correct?

Mr. HEYMANN. They were intended to be what I was involved in, but I was assisted by the recollections of my staff at that time.

The CHAIRMAN. OK. Do you have a copy of your notes?

Mr. HEYMANN. I have a copy, yes, thank you, Senator.

The CHAIRMAN. Might I ask, when you say you were assisted by your staff, that is your Secretary and the phone calls that came in and out, the logs, all of the documentation that she had and that your assistants had, that Mr. Margolis had, and that Mr. Adams had?

Mr. HEYMANN. That's correct. Mr. Adams had written some contemporary memos, I think at my request, at the time of the Foster death, and I had those, too.

The CHAIRMAN. OK. Senator Shelby.

Senator SHELBY. Ms. Monaco also made notes contemporaneous with the event, did she not, Mr. Heymann?

Mr. HEYMANN. I had not been aware of that until a couple of days ago, Senator Shelby.

Senator SHELBY. Have you seen her notes?

Mr. HEYMANN. Never.

Senator SHELBY. But you've heard that she made notes of these events, have you not?

Mr. HEYMANN. I learned that with rapt interest.

Senator SHELBY. OK. At some point on the 21st, it was determined that Roger Adams and David Margolis would be sent over to the White House, as I said, to review documents regarding the relevance and privilege dealing with the Foster investigation, you said that was right?

Mr. HEYMANN. That's correct, Senator Shelby.

Senator SHELBY. The scope of this review, according to your notes, would be looking for anything to do with this violent death. You want to refer to your notes?

Mr. HEYMANN. Yes, I have my notes here and that's correct.

Senator SHELBY. Is that correct?

Mr. HEYMANN. That's correct.

Senator SHELBY. Was it your understanding by the end of the 21st that an agreement or understanding had been reached between the Department of Justice, the Park Police and the White House over how the search would be conducted, the search of the Deputy Counsel's Office?

Mr. HEYMANN. Yes, Senator Shelby, in the sense that we all had agreed on how it would be done, and in what I still think was a very sensible way——

Senator SHELBY. Would you relate what you recall of what you agreed to or thought you had agreed to?

Mr. HEYMANN. I'd be happy to. I just wanted to make clear, Senator Shelby, I didn't feel that I had a binding commitment by Mr. Nussbaum or anyone else. We simply all had talked about it by then and we all were on the same track, we all were on the same page, we all thought it would be done in the way I'm about to describe.

Senator SHELBY. Did you think when you sent Mr. Adams and Mr. Margolis over there that it would turn into an adversarial relationship or something close to that?

Mr. HEYMANN. No, I did not.

Senator SHELBY. You did not.

Mr. HEYMANN. You had asked me to describe what the understanding was, Senator Shelby.

Senator SHELBY. Yes, sir, that's right. You go ahead.

Mr. HEYMANN. The understanding was that they would see, these two senior prosecutors, not the investigators, but the prosecutors would see enough of every document to be able to determine whether it was relevant to the investigation or not. Now, I've been handed some pages from my transcript, but let's assume this is a document, it's about 30 pages long. They would look at this and it says "deposition of Philip Heymann, re: Whitewater," and they would know that that didn't seem to have anything, any likely bearing on the cause of Vince Foster's death. If need be, they might have to look a page or two into it, but the object was to maintain the confidentiality of White House papers to the largest extent possible with satisfying ourselves that we were learning of every potentially relevant document.

If there was a relevant document, it would be set aside in a separate pile. If the White House Counsel's Office believed that it was

entitled to executive privilege, and therefore should not be turned over to us, we would then have to resolve that: There would be a separate pile of documents; some relevant ones would go directly to the investigators and some that were relevant would be subject to executive privilege claims, in which case we would have to resolve it perhaps with the assistance of the Legal Counsel's Office of the Justice Department.

Senator SHELBY. Mr. Heymann, did you contemplate that this would be done jointly or just done by the White House Counsel?

Mr. HEYMANN. I thought it was essential, Senator Shelby, that it be done jointly with these two prosecutors being able to satisfy themselves, and through them satisfy the investigative agencies that whatever might be relevant was being made available to us.

Senator SHELBY. That it would be a bona fide investigation and not a sham; is that right?

Mr. HEYMANN. I don't——

Senator SHELBY. That it would be a bona fide investigation.

Mr. HEYMANN. That it would be a review of documents that would be entirely credible to us, to the investigators and to the American public.

Senator SHELBY. OK. Your notes mention, I believe, Mr. Heymann, that Steve Neuwirth objected to this agreement, but that Mr. Nussbaum agreed with Margolis that it was a done deal; is that correct? You want to refer——

Mr. HEYMANN. That is what they reported to me when Mr. Margolis and Mr. Adams returned that evening, the evening of Wednesday the 21st, to the Justice Department.

Senator SHELBY. What do your notes reflect, I was paraphrasing them?

Mr. HEYMANN. My notes say that they discussed the system that had been agreed upon, I just described it to you. BN, that stands for Mr. Nussbaum, agreed. SN, that stands for Steve Neuwirth, said no. We shouldn't do it that way. The Justice Department attorneys shouldn't have direct access to the files. David Margolis, the Justice Department attorney, said it's a done deal and Mr. Nussbaum at that point said yes, we've agreed to that.

Senator SHELBY. Was it important to you and to the Department of Justice that you represented that the documents be reviewed independently, is that why it was important that the Department of Justice look for relevance and privilege jointly in this undertaking?

Mr. HEYMANN. Yes, Senator Shelby. Again, I did not think it was necessary and do not think it was necessary to review documents which we could quickly determine had no relevance to Vince Foster's death. So our attorneys would not have looked at those, that was a clear part of the understanding.

Senator SHELBY. I understand that you received a call from David Margolis the next morning from the White House about the search; is that correct? You want to refer to your notes?

Mr. HEYMANN. That's correct, Senator Shelby.

Senator SHELBY. What was this call about?

Mr. HEYMANN. He and Roger Adams had gone over with the Park Police and the FBI to do the review we planned.

Senator SHELBY. This was pursuant to the understanding you had with Mr. Nussbaum?

Mr. HEYMANN. Pursuant to the understanding of the 21st.

Senator SHELBY. OK.

Mr. HEYMANN. Mr. Margolis told me that Mr. Nussbaum had said to him that they had changed the plan, that only the White House Counsel's Office would see the actual documents. Mr. Margolis had asked Mr. Nussbaum whether that had been discussed with me and Mr. Nussbaum had said no. I told Mr. Margolis at that point to put Mr. Nussbaum on the phone, and I was——

Senator SHELBY. Did he get on the phone?

Mr. HEYMANN. He got on the phone.

Senator SHELBY. What did you say to him?

Mr. HEYMANN. I told him that this was a terrible mistake.

Senator SHELBY. This was a terrible mistake. Go ahead.

Mr. HEYMANN. Please don't——

Senator SHELBY. That was your words; is that right?

Mr. HEYMANN. Please don't assume that what I now paraphrase would be the words I actually used. This is 740 days ago and it would be quite unreliable to think they're the exact words. I remember very clearly sitting in the Deputy Attorney General's conference room and picking up the phone in that very big room. I remember being very angry and very adamant and saying this is a bad mistake, this is not the right way to do it, and I don't think I'm going to let Margolis and Adams stay there if you are going to do it that way because they would have no useful function. It would simply look like they were performing a useful function, and I don't want that to happen.

The CHAIRMAN. You told this to the Counsel?

Senator SHELBY. You told this to Nussbaum; is that correct?

Mr. HEYMANN. I told this to Mr. Nussbaum.

The CHAIRMAN. But you volunteered this? In other words, it did not come from Mr. Margolis or Mr. Adams? You said I'm not going to keep them here if this——

Mr. HEYMANN. I suspect, Senator D'Amato, that when I talked to Mr. Margolis in the same phone conversation shortly before I asked him to put Mr. Nussbaum on the phone he would have said to me something like we have no useful role here, and I would have picked it up from that, and I would have said I don't think I'm going to keep them there. Mr. Nussbaum was, as always, entirely polite and he said—he was taken aback by my anger and by the idea that I might pull out the Justice Department attorneys and he said I'll have to talk to somebody else about this or other people about this, and I'll get back to you, Phil.

Senator SHELBY. Did he tell you who he was going to talk to?

Mr. HEYMANN. He did not tell me who he was going to talk to.

Senator SHELBY. He didn't tell you or indicate it was the President of the United States or the First Lady?

Mr. HEYMANN. He never indicated in any way who he was going to discuss this with, nor has he ever.

Senator SHELBY. Just the phrase I'm going to talk to somebody?

Mr. HEYMANN. Just the notion I have to talk to other people about this. I had obviously shaken him enough that he wanted to consider whether he should come back to what we had agreed to

the day before, on the 21st, but there were other people involved that he had to talk to about that.

Senator SHELBY. Was it your impression, Mr. Heymann, then, that Mr. Nussbaum would get back to you before any review of the documents in the White House was conducted?

Mr. HEYMANN. He said to me, specifically, don't call Adams and Margolis back to the Justice Department. I'll get back to you.

Senator SHELBY. Did he ever call you back?

Mr. HEYMANN. He never called me back.

Senator SHELBY. Did you ever consent to the change in the plan in how the search would be conducted, Mr. Heymann?

Mr. HEYMANN. I did not.

Senator SHELBY. Did David Margolis or any other law enforcement official have an impression of whether the Department of Justice had consented to this search?

Mr. HEYMANN. Mr. Margolis was clear that the Department of Justice had not consented to the changed arrangement. He obviously thought that he was to remain, even if it was changed, because he did remain, but he knew that we had not consented to the changed arrangement and did not approve of it.

Senator SHELBY. You later found out, sir, that the search was conducted with Mr. Nussbaum calling the shots that night; is that right?

Mr. HEYMANN. That's correct.

Senator SHELBY. Did you talk to Mr. Nussbaum after that?

Mr. HEYMANN. I found that out when Mr. Margolis and Mr. Adams returned the evening of the 22nd——

Senator SHELBY. Returned to your office?

Mr. HEYMANN. When they returned to my office. I went home to an apartment we were renting then and I picked up the phone and I called Mr. Nussbaum and I told him that I couldn't imagine why he would have treated me that way. How could he have told me that he was going to call back before he made any decision on how the search would be done and then not call back?

Senator SHELBY. What did he say to that?

Mr. HEYMANN. I don't honestly remember, Senator Shelby. He was, again, polite. There was no explanation given that I would remember. I remember saying to him, Bernie, are you hiding something. He said no, Phil, I promise you we're not hiding something.

Senator SHELBY. Did you say to him—and you can refer to your notes if you like—Mr. Nussbaum, you misused us? If you said that, what did you mean by that? Do you believe, then, that the White House had something to hide or was worried about the investigation? What was your impression?

Mr. HEYMANN. When I said you misused us, or something like that, I meant that he had used Justice Department attorneys in a way that suggested that the Justice Department was playing a significant role in reviewing documents when they had come back and told me they felt like they were not playing any useful role there.

Senator SHELBY. Did you know later that the White House had issued a statement something to the effect that the Justice Department was involved in the review of the documents and not just in observing, and then they did a correction on that when someone objected, maybe it was your office?

Mr. HEYMANN. The following morning it was called to my attention that they had said that the Justice Department and the FBI—I now know it—in the press release or whatever it was, it said the Justice Department along with the FBI and the Park Police had supervised the review of documents.

Senator SHELBY. Was that a CBS News report?

Mr. HEYMANN. What I was shown at my deposition, Senator Shelby, was, I think, a piece from The Washington Post. I directed that the Department of Justice put out a correction that we had not supervised, that we had simply been there as observers while the search was carried out by the White House Counsel.

Senator SHELBY. Was your next major contact with the White House regarding the investigation on July 27th, Mr. Heymann, when you and the Attorney General were summoned to the White House and given a note?

Mr. HEYMANN. That's correct, Senator Shelby. If I may.

Senator SHELBY. Go ahead.

Mr. HEYMANN. In the days between the 22nd and the 27th, I tried to maintain contact through Mr. Margolis with the Park Police just to make sure that they were able to conduct their investigation, that they were going forward. So there would have been daily calls, not involving me but involving Mr. Margolis. I would check in with Mr. Margolis every day to see whether the Park Police were satisfied that they were able to conduct their investigation.

Now, what I was hearing was it's hard to investigate in the White House, but they were conducting their investigation. They were finding it difficult, but they were not complaining.

Senator SHELBY. Mr. Heymann, we've related your experience in the Justice Department as a lawyer and so forth. Have you ever been involved in an investigation of the size and scope of this where there was lack of cooperation, in other words, interference in the investigation like this?

Mr. HEYMANN. To tell you the truth, Senator Shelby, I think it's rather typical. I think you always have trouble investigating in any Administration where you are dealing with White House staff. I've watched them since Eisenhower's day and I've never seen a situation where an investigation went smoothly when it involved the White House.

Senator SHELBY. When you and Attorney General Janet Reno were summoned to the White House and given the note, at that meeting were any discussions or concerns raised to you or the Attorney General about what to do with the note? Would you just relate to us when you went to the White House what transpired?

Mr. HEYMANN. I rode over with the Attorney General on the evening of Tuesday the 27th. We had a 7 p.m. meeting. We had not been told what it was about, though. I thought it was probably about the Foster matter. We were shown into Mr. McLarty's office. I think at first only Mr. Gergen, David Gergen was there. Then Mr. Nussbaum came in and Mr. Burton, I believe, and certainly Mr. McLarty. There had been some small talk before that.

Mr. Nussbaum sat down on the couch—there are two couches that face each other across a coffee table—he pulled out an envelope and he said yesterday we found these, we found a torn-up

note. I do not believe he assembled it for us. I think he may have taken out the yellow pages and shown it to us. I can't remember exactly. He had written down what the note said and he read us the note. They wanted to know what we thought should be done with it. The Attorney General said turn it over to the Park Police immediately. She then asked why are we just getting it now if it was found 30 hours before then.

The White House people, I don't know whether it was Mr. Nussbaum or who, said that they wanted first to show it to Mrs. Foster and they wanted to show it to the President who might, if he had wanted to, have asserted executive privilege, they said. They said they were not able to get to the President until late on the 27th and as soon as they got to the President and made the President aware of the note, they had called us.

Senator SHELBY. Did you ever see the note in its pieces?

Mr. HEYMANN. Yes, I should say at that point the Attorney General left to give—I think she was speaking at an occasion of some sort that evening. They asked me to stay. I called Mr. Margolis and asked him to have the Park Police come over right away. At about 9:00 the duty officer of the Park Police arrived at the White House. I went down and sat next to him and talked to him and said you're about to be given a note in the Vince Foster investigation, please feel free to ask any questions. I wanted him not to be intimidated in any way.

I brought him up and at that point Mr. Nussbaum and the others sat on one side of the table. I think the Park Policeman and I sat on the other. On this occasion Mr. Nussbaum assembled the note.

Senator SHELBY. Did he have any trouble assembling the note?

Mr. HEYMANN. Yes, the note fell down, a number of the pieces of the note fell down on the floor and there was a scramble to pick them up. I heard the fingerprint expert just now, but there would be any number of fingerprints from picking up the pieces that had fallen on the floor. It was assembled. Mr. Nussbaum asked the Park Policeman to make his own copy. I think it was read to him of what the note said. I asked the Park Policeman if he had any questions he wanted to ask. I encouraged him to ask questions. He said he didn't have any. I didn't realize at that time he was simply a duty officer. This was probably all new to him. They gave him the note and I asked him to give me a lift back to the Justice Department, which he did, and that's the last I saw of him that day.

Senator SHELBY. Mr. Chairman, I have a few more questions, can I continue? I think it's important.

The CHAIRMAN. How much more time does the Senator think he needs?

Senator SHELBY. Another 5 or 6 minutes I think.

The CHAIRMAN. Let me say this: If the Senator keeps it within 5 minutes we'll continue. We'll give you the same time.

Senator SHELBY. Mr. Heymann, the next day, I believe your notes reveal the 28th, the Department of Justice called the FBI. Is that right, sir?

Mr. HEYMANN. I directed Mr. Margolis, who was the person in contact with the investigative agencies, particularly the FBI, to call

the FBI and ask them to do a thorough investigation of the finding of the note.

Senator SHELBY. Were your words in the note to do an aggressive investigation?

Mr. HEYMANN. Yes, I told them to be very aggressive.

Senator SHELBY. Then, the next day, the 29th, according to your notes, you received a call from Mr. Collier, the Chief of Staff to the Secretary of the Interior. What was the substance of that call?

Mr. HEYMANN. I had never met him. He sounded quite worried about something. He identified who he was and asked if he could come over to see me. I said sure, come right away. He came over and we went into my office and he expressed—he said the Park Police are very, very upset about the investigation. This was the first time something like that had been told to me.

Of course, it was the day after the note had been found and they probably felt that they were looking bad with a note having been found 4 or 5 days later. He said that he wondered whether the Park Police were capable of doing an investigation in the White House. He said that they felt they really couldn't get the cooperation they wanted, and that he wanted to pull the Park Police out and he'd like me to substitute the FBI for the Park Police.

Senator SHELBY. What did you say?

Mr. HEYMANN. I told him that the FBI was already in there at my request investigating the finding of the note and that I would see to it that he had no more trouble with the White House in his investigation. I then called Mr. Gergen and I said to him——

Senator SHELBY. The notes that are flashed up on the screen now reflect that you called Mr. Gergen and that you also had in that call Mr. Gearan; is that correct?

Mr. HEYMANN. I called Mr. Gergen and I said we have a very serious problem on our hands, and I described it to him. Mr. Gergen said look, I'd like you to call back or I'll call you back. What he obviously wanted to do, and then did, was to assemble a large number of people from the White House—I don't know whether it was five or eight or more—in an office and then have me call back and put me on a speakerphone.

I told them all that they had a major disaster brewing, that I wasn't going to put up with it anymore, that the FBI was in there, that the FBI was going to interview anybody it wanted to and the Park Police were going to interview anybody they wanted to, that I wanted full cooperation, that White House Counsel could not attend the interviews—that seemed to be an issue of some contention—and that if they did everything as I described it, they might manage to avoid prolonged Senate hearings in the summer of 1995. Now, that last was not true, Senator Shelby. They did everything as I told them to.

Senator SHELBY. Was this basically your last entry in your notes?

Mr. HEYMANN. Yes, Senator Shelby.

Senator SHELBY. We appreciate you. Thank you, Mr. Chairman.

The CHAIRMAN. Philip, you were certainly prophetic, If I might, on the second page, Thursday the 22nd, at the top, I guess Adams, Richard Adams and David Margolis "to look at stuff," in other

words, means that was what they were supposed to do, to take a look at the first page, that was the agreement?

Mr. HEYMANN. To look at whatever was necessary, but only what was necessary to determine whether a document was relevant to the investigation.

The CHAIRMAN. Now, this was an agreement, it wasn't signed, but there was a meeting of the minds, you have no doubt about that?

Mr. HEYMANN. Senator D'Amato, the only reason I don't like calling it an agreement is I would have felt perfectly comfortable the next day calling up Mr. Nussbaum and saying, you know what we talked about yesterday, I don't think that's adequate, I think we have to do more. He wouldn't have said to me, you agreed yesterday. He would have said, look, we worked this out, Phil, it's a shame to open it up. It's simply that we had all thought the same thing on the 21st.

The CHAIRMAN. You had set out a methodology to carry out this investigation?

Mr. HEYMANN. That's correct.

The CHAIRMAN. Is that a fair statement?

Mr. HEYMANN. That's fair.

The CHAIRMAN. Just one last thing—and I thank the counsel for being so patient, and we will certainly give you all the time that you want—"BN," and you have quotes around this, and obviously this is a reconstruction to the best of your ability, "'Change in plan. You observe us as we do the search.'" That's Bernie telling you this?

Mr. HEYMANN. This is probably second or third hand, Senator D'Amato. That's probably what Mr. Margolis told me on the phone, at about 10:00 on Thursday, that Mr. Nussbaum had said to him.

The CHAIRMAN. This is Adams and Margolis saying that there's a change and you're going to observe and we will do the search?

Mr. HEYMANN. This is Mr. Margolis telling me on the phone what he had been told by Mr. Nussbaum.

The CHAIRMAN. Yes. One last thing, on the third page, 9:00, at the top, the second line, "PH—BN," and there is quotes around "'you misused us.'" That's you talking to Bernie?

Mr. HEYMANN. That's correct.

The CHAIRMAN. That came about——

Mr. HEYMANN. Because I thought I had the right to decide whether the Justice Department attorneys would be present at a search that was conducted in a way that I had not approved of. Without telling me that he was going to do that and having told me that he would not do that without consulting with me, he used Justice Department attorneys as part of a search that was carried out in a way that I had not approved of——

The CHAIRMAN. Indeed——

Mr. HEYMANN. —and plainly disapproved of.

The CHAIRMAN. Indeed, the next day a statement went out which would have led reasonable people to believe that you had actually—"you" being Justice Department people—supervised or had been part of this review process?

Mr. HEYMANN. I don't know who gave it out, Senator D'Amato, but in the newspaper the next day and perhaps elsewhere there was that description.

The CHAIRMAN. Whether an aide or someone else, it quoted White House sources as having indicated that, and you were sufficiently upset that you set the record straight by sending out something?

Mr. HEYMANN. That's correct.

The CHAIRMAN. My last question is, if you had known that the search would have been conducted in the manner that we now know it was, would you have pulled the two people out of there?

Mr. HEYMANN. I believe I would have. I'm not sure that would have been the right thing to do, but I believe I would have pulled them out, Senator D'Amato.

The CHAIRMAN. So that you would not have left people with the impression that there was a legitimate review process that Justice had approved?

Mr. HEYMANN. Senator D'Amato, the other option was simply to make clear that it was conducted without the investigators or the Department of Justice attorneys seeing files. There was nothing wrong with them staying as long as nobody was deceived as to their role. There was something wrong with the process, but there was nothing in addition wrong with their being there in a flawed process as long as it was clear what they were doing.

The CHAIRMAN. OK. Thank you, Mr. Heymann.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Heymann, you focused your opening statement here on who should determine what documents should be made available to the investigators and you premised that on the basis of a lot of your experience which you spelled out on the second page of your statement, and also your concern for the appearance of independent law enforcement.

It's important. I understand all of that, but before I get to that I want to talk with you a little bit about what documents should be made available to the investigators to begin with so we have some sense of what the requirements are. I'm prompted to ask you this question by your comment that you wanted to send your people over there because you were concerned that the investigators might be too deferential.

I guess my question is, might there not also be a problem since we've had some of the investigators here who essentially seem to take the position that they were entitled to go in and look at everything? Let's start out by examining what documents should be made available. If you were the White House Counsel and investigators showed up and said, now we want to go in and we want to examine all the files in this office, that's what we've come to do. We think we have a suicide. We want to check out whether we can find something to corroborate there's been a suicide, a suicide note, but we want to look at all files in the White House Counsel's Office. You are the White House Counsel, what would you have said to that?

Mr. HEYMANN. I would have said that's too much. We ought to try to find a way to make sure that you are getting whatever may bear on the death of Mr. Foster, if we can stay with Mr. Foster, but there is no reason why the Park Police or any other investigative agency should be reading every file in the Deputy White House Counsel's Office.

Senator SARBANES. Actually, there's some fairly complicated legal issues involved, are there not, in a situation of that sort?

Mr. HEYMANN. It looks to me, Senator Sarbanes, and I think to most people, that it works something like this: There's a general presumptive privilege of confidentiality to Presidential files, White House files, but one that a court would override if identified documents were shown to be useful—something less than essential, but highly useful to an investigation and I think that's the way it works.

So if somebody had come into the White House Counsel's Office and said let us see all your files, even without it being a likely suicide, a perfectly reasonable response would be: "No, let's work out something that is credible and yet protects our files from even investigators reading everything that's in a White House file."

Senator SARBANES. Now, you're working out a cooperative arrangement, but if it went to a court to override the general presumption of confidentiality for White House papers, which is an established proposition, the court would override it on the basis of upholding a subpoena that had been requested?

Mr. HEYMANN. That would be the procedural context in all likelihood, either a search or a subpoena, but, once again, the court would say, I'm quite sure, tell me the specific documents you want and the basis on which you say those are very useful to your investigation. If the law enforcement authorities could satisfy that, they would get the documents. If they could not, they would not.

Senator SARBANES. If a subpoena were issued—of course, you don't have any crime here so you don't even have that basis on which to premise a subpoena; correct?

Mr. HEYMANN. That's correct.

Senator SARBANES. I mean, at the time, if someone had said let's get a subpoena, you would have said there is no crime on which to base the subpoena. There is no Grand Jury or anything else of that sort, would that be the case?

Mr. HEYMANN. People might differ on that, but I would have thought that we did not have the basis for saying that there should be a Grand Jury to investigate a crime and issue subpoenas.

Senator SARBANES. But let's go beyond that. Let's just talk about a general subpoena. I take it you don't think a court would have upheld a general subpoena?

Mr. HEYMANN. If we had asked for all documents in Mr. Foster's office, for a variety of reasons that I don't think it's useful to go into, but including executive privilege, I think the court would not have upheld it——

Senator SARBANES. All right. So you asked for——

Mr. HEYMANN. —or enforced it.

Senator SARBANES. You ask for a more limited subpoena, asking for a particular category of documents?

Mr. HEYMANN. If we had done that.

Senator SARBANES. Who would then examine the files in the White House Counsel's Office to separate out the documents that would be responsive to that subpoena?

Mr. HEYMANN. I imagine that in the first instance the White House Counsel would do it, probably keeping records of how it was done and all the documents that were found and what was delivered and what was not delivered.

Senator SARBANES. So actually, even with a subpoena, it would have come back almost full circle to the White House Counsel going through the documents and then presenting them and saying these are responsive to the subpoena?

Mr. HEYMANN. Yes, but it would have been quite different than what actually happened in this case, Senator Sarbanes.

Senator SARBANES. I understand, because in this case, in that instance you would have had very clearly drawn lines about providing these things, but I'm just trying to get what the legal rights are in the matter. You were operating, I think, commendably beyond that with respect to appearances and based on your own experience, but I'm just trying to get a sense of what the legal doctrine is that prevails.

Mr. HEYMANN. If a well-defined category of documents was subpoenaed by a court at the request of a prosecutor, the White House Counsel, as custodian of those documents, would have been the person who would go through and identify those documents and appear with them either to object to their being delivered or to deliver them.

Senator SARBANES. So, in effect, Nussbaum would have done that without anyone in the room, so to speak?

Mr. HEYMANN. That's correct, but it would have been a somewhat ministerial job of deciding was document A, B and C within the well-defined description of documents in the subpoena.

Senator SARBANES. Now, your view in seeking to set up this procedure on Wednesday——

Mr. HEYMANN. Yes, sir.

Senator SARBANES. —on the 21st, was to essentially deal with the question of appearances. In other words, you had a concern that while the White House might be operating within its legal rights, the appearance of that would be such that a different procedure, you thought, would be more effective in addressing that situation. Is that a fair statement?

Mr. HEYMANN. I'm always uncomfortable in terms of putting it in terms of appearances, Senator Sarbanes. I was worried about appearances. Another word for appearances is credibility of the institutions of the Department of Justice and the White House, but beyond that I believed that you could design a procedure that would respect both the investigators' need to satisfy themselves that they were getting whatever information they ought to have, and the White House's need for protection of confidentiality of documents.

To fail to follow a procedure that satisfied both seemed to me to be not just a matter of appearances, but a matter of putting forth less information than law enforcement was legitimately entitled to.

Senator SARBANES. You were trying to find what you thought was a practical resolution of some competing interest?

Mr. HEYMANN. That's correct.

Senator SARBANES. Each of those interests being legitimate, the reconciling of these legitimate interests was the problem you were trying to address; is that correct?

Mr. HEYMANN. That's fair, Senator Sarbanes.

Senator SARBANES. I yield the balance of my time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Good morning, Mr. Heymann.

Mr. HEYMANN. Good morning, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Let me press on the issue of legal rights versus practical solutions. It's quite clear that your concerns were prescient. Indeed, the problems that resulted from the White House Counsel's Office maintaining control of the process in the way that they did led to criticism and led to problems that bring us here today. That's clear.

But, to follow on Senator Sarbanes' point, what you were proposing was a practical solution to a difficult question of balancing legal interests. So I'd like to go back for a moment to talk about the legal interests that were involved. From the standpoint of the law, did the Park Police, in your view, have the right to enter Vincent Foster's office absent the consent of White House Counsel on July 21, 1993?

Mr. HEYMANN. No, because they lacked probable cause for a search.

Mr. BEN-VENISTE. The issue of a search warrant is completely off the screen, that is beyond the pale; correct?

Mr. HEYMANN. They didn't have probable cause to believe that there was evidence of a crime or even specific evidence of a suicide there.

Mr. BEN-VENISTE. So from the standpoint of the law, they had no right to actually be in the office?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. So that to allow them in, in a sense, was a compromise of the White House Counsel's rights to protect the confidences of the materials in that office; correct?

Mr. HEYMANN. It was going beyond what could be legally required of the White House Counsel.

Mr. BEN-VENISTE. Now, we talk about a subpoena, and I think we have established that under the circumstances of Mr. Foster's death that while a hypertechnical argument might be made to justify a subpoena, in your view, clearly, there was no justifiable interest in the impaneling of a Grand Jury or the issuance of a subpoena; correct?

Mr. HEYMANN. Yes, the Department of Justice manual for Grand Juries says that a Grand Jury should only be used to investigate whether a particular individual has committed a particular crime. We were not in that state.

Mr. BEN-VENISTE. So that from a technical standpoint, and clearly from a practical standpoint in your view, a subpoena could not have issued. But even if a subpoena could have issued, if it were just an attorney's office and not the lawyer for the President of the United States, the Department of Justice would have to go through

a number of steps to justify the issuance of a subpoena for the files of a deceased attorney, isn't that so?

Mr. HEYMANN. Yes, if you are talking about subpoenaing all the files of a deceased attorney, the subpoena would not have been acceptable, even if it were not the White House——

Mr. BEN-VENISTE. On its face, no reasonable judge would entertain the enforcement of such a subpoena; correct?

Mr. HEYMANN. I believe that's correct.

Mr. BEN-VENISTE. Let's say that all the steps for subpoenaing the files of an attorney were satisfied and that the subpoena were narrowly drawn. As you've indicated, it would have to focus on Mr. Foster's state of mind in this case, any evidence reflecting his state of mind, any threats made to him and the like. Is that so?

Mr. HEYMANN. Yes, because we didn't know anything further to seek, so it would have had to be written in those terms.

Mr. BEN-VENISTE. Now, if it weren't just an attorney's office, but now it is the Counsel to the President of the United States, there are far more complex issues that are involved in seeking such materials, isn't that so?

Mr. HEYMANN. That's so.

Mr. BEN-VENISTE. I know because you and I worked on these issues more than 20 years ago that one would have to be extremely narrow and focused to satisfy any court to obtain the records in the Counsel's Office of the President of the United States, isn't that so?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. But even if that hurdle were satisfied, is it correct, Professor Heymann, that in the final analysis, the person who would make the judgment as to which documents satisfied the narrowly drawn scope of that subpoena would be, in fact, Counsel to the President, Mr. Nussbaum?

Mr. HEYMANN. Yes, Mr. Ben-Veniste. I'm always worried by that, by the form of that question. The answer is yes. Therefore, everything would have been exactly the same had we issued a subpoena that said please give us everything that might bear on Mr. Foster's state of mind. We would have gotten White House Counsel's judgment as to what ought to be given to the law enforcement authorities.

Mr. BEN-VENISTE. So that if you——

Mr. HEYMANN. Had we been able to identify particular documents, that would have been quite different.

Mr. BEN-VENISTE. Right. You were in no position to do that?

Mr. HEYMANN. We were in no position to do that.

Mr. BEN-VENISTE. So that if we went around this entire circumference up to 3——

Mr. HEYMANN. 360?

Mr. BEN-VENISTE. —360 degrees, we would get to a point where it would be Mr. Nussbaum again reviewing the documents on his own?

Mr. HEYMANN. I know of no way that we could have gotten further by seeking a subpoena in this case.

Mr. BEN-VENISTE. Now, under these circumstances, however, it would have taken how long to get through all of the stages, assuming they could have been gotten through?

Mr. HEYMANN. A very long time.

Mr. BEN-VENISTE. Months?

Mr. HEYMANN. If it were challenged in the courts——

Mr. BEN-VENISTE. Years?

Mr. HEYMANN. —it would be years.

Mr. BEN-VENISTE. So you were aware, were you not, that the Park Police were interested in reviewing the materials they were interested in in a timely way?

Mr. HEYMANN. Yes.

Mr. BEN-VENISTE. So, in effect, Mr. Nussbaum's procedure, while it was not one which satisfied you because of your very substantial experience in prior circumstances with investigations involving high levels of the Executive Branch, nevertheless Mr. Nussbaum was performing virtually the same kind of review that you might perform if you went through all of this legalistic process?

Mr. HEYMANN. We could not have gotten any further by issuing a subpoena.

Mr. BEN-VENISTE. OK. I'm not suggesting here that Mr. Nussbaum's procedure was the best procedure, only that it was a legal procedure and one which did not involve any obstruction of the investigation. Is that a fair analysis?

Mr. HEYMANN. I think it is a fair analysis, and I don't think we had any legal power to do what I was demanding. We didn't have any legal power to demand in court what I was insisting on.

Mr. BEN-VENISTE. To review what you were insisting on, it was a procedure that you felt was reasonable in the circumstances, although it would have involved waiving or giving up in some measure the legal rights to which the White House was entitled to rely?

Mr. HEYMANN. To a very small measure and for the benefit of a very great increase in reliability and credibility.

Mr. BEN-VENISTE. In your view, Mr. Nussbaum was not looking at the long-term consequences of his actions, and you told him so?

Mr. HEYMANN. I certainly did.

Mr. BEN-VENISTE. Now, let's proceed to the initial contact. On Wednesday the 21st, according to your notes, Professor Heymann, you've got a conversation with Roger Adams which says, "stand by to watch search of Foster documents." Was that the initial direction that you gave to Mr. Adams, that that was going to be involved in his interaction?

Mr. HEYMANN. Now, my first discussions that day with anyone in the Department of Justice would have been with Roger Adams. I'm quite sure that I did not mean at that point to watch somebody else search the documents.

Mr. BEN-VENISTE. So that, even though this may not be an artful way of putting it, it was your intention that he would get involved from the beginning in connection with reviewing with Mr. Nussbaum the contents of the office in the limited way that you've expressed?

Mr. HEYMANN. Absolutely. If I may say, Mr. Ben-Veniste, I was very careful and conscious in the selection of Mr. Adams and Mr. Margolis as long-term, career, highly respected, highly discrete prosecutors.

Mr. BEN-VENISTE. Now, you had the conversations that resulted in what you regarded as an understanding with Mr. Nussbaum,

not a legal contract, not something that's enforceable, but you felt you had a meeting of the minds?

Mr. HEYMANN. Yes.

Mr. BEN-VENISTE. In your view, had Mr. Nussbaum called back and said, I've been thinking about it and I really disagree with you, you would have accepted that—you would have disagreed with it, but it was his right in your view?

Mr. HEYMANN. I might have disagreed with what he proposed in substitution, but I would not have thought that there was something wrong with reopening the subject.

Mr. BEN-VENISTE. OK. The following day when Mr. Margolis essentially told you the same thing, that Mr. Nussbaum has reopened this and he has now said that he does not wish anyone other than White House Counsel personnel or White House high officials to review this material, you said to him that you thought he was making a big mistake?

Mr. HEYMANN. Correct.

Mr. BEN-VENISTE. The reason for that was in terms of the long-term consequence that you've described; correct?

Mr. HEYMANN. What he was proposing would not establish a trustworthy and believable process.

Mr. BEN-VENISTE. From the institutional standpoint, you felt that it was important for the White House to establish such a trustworthy and credible process?

Mr. HEYMANN. It was important for the Department of Justice, too.

Mr. BEN-VENISTE. Now, in terms of its participation or nonparticipation in the procedure——

Mr. HEYMANN. Mr. Ben-Veniste, there's a question that comes first. The earliest question is who has the right to decide what the process will be. I did not think the White House had the right to decide, by itself, what the process would be. I thought that, as a practical matter, no White House could survive deciding by itself without the Justice Department's credibility supporting it. Therefore, I thought we were necessary partners to deciding what the process should be.

Mr. BEN-VENISTE. "Survive," again, from your standpoint, meant politically?

Mr. HEYMANN. That's correct. Survive against serious public attacks.

Mr. BEN-VENISTE. OK. Now, when Mr. Margolis told you, in fact, that Mr. Nussbaum had revised the procedure that he was willing to go along with, you told him you thought it was a mistake and he suggested that he would need to talk to some people. Then, you did not hear from anyone about what happened until later that afternoon when Mr. Adams and Mr. Margolis came back?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. If I understand your testimony, in addition to Mr. Nussbaum not taking your advice, you were also upset by the fact that Mr. Margolis and Mr. Adams stayed through the procedure without you having the opportunity to reassess whether in your view they should stay?

Mr. HEYMANN. That is also correct.

Mr. BEN-VENISTE. OK. Now, you later learned, did you not, that you had had some kind of miscommunication with Mr. Margolis about that subject?

Mr. HEYMANN. I've heard through the Independent Counsel and, I think, from Mr. Margolis, too, that he believed that our morning conversation authorized and encouraged him to stay, even if the process were one that both of us very much disapproved of.

Mr. BEN-VENISTE. You were of the view that you should be the one making that determination and Mr. Margolis' understanding was inaccurate?

Mr. HEYMANN. I think he believes that in our morning conversation I had addressed the hypothetical question what if Mr. Nussbaum comes back and says we're going to do it his way, what should he do. Mr. Margolis thought that I had answered that, really, at that point it's better to stay than go. I don't remember it that way, but either of us could be right or there could be simple confusion there.

Mr. BEN-VENISTE. So, in any event, that was another thing that upset you? It wasn't that Mr. Nussbaum told Mr. Margolis that he had had another conversation with you and you said it's OK to stay?

Mr. HEYMANN. It wasn't that he stayed. It was that I had had a clear understanding with Mr. Nussbaum that I might want to call these people back because it would look to me as if we were providing an appearance of rigor in the investigation that wasn't going to be there——

Mr. BEN-VENISTE. I understand.

Mr. HEYMANN. —and I never got—Mr. Nussbaum said don't worry, I'll call you before we do anything, and I made the mistake of not worrying.

Mr. BEN-VENISTE. You had plenty of time later to make up for that.

Mr. HEYMANN. OK.

Mr. BEN-VENISTE. But, on that day, not to make light of it, obviously you were upset, but what I'm suggesting is if there was any suggestion that Mr. Nussbaum told Mr. Margolis that you had given the green light, that isn't the case?

Mr. HEYMANN. There is no such suggestion. I've asked Mr. Margolis that and he said no, nothing like that happened.

Mr. BEN-VENISTE. Now, they come back and that evening you phoned Mr. Nussbaum and reiterated to him in strong terms your unhappiness with what had occurred and you made the statement to him, and since you've put it in quotation marks in your notes even several months later when you wrote them, I take it you had a distinct recollection that you used the term "you misused us"; correct?

Mr. HEYMANN. I think in terms of my note writing it just means that I was very clear that I'd said something like that. It was at least a paraphrase of something I said.

Mr. BEN-VENISTE. As I think has been established, what you meant there was that you felt it was inappropriate for the Justice Department to stay even though the attorneys were not the ones who looked at the documents in the first instance; correct?

Mr. HEYMANN. That, plus it was my decision to make and not his.

Mr. BEN-VENISTE. Now, you talked about your later displeasure when you read a newspaper account the following day that indicated that the Justice Department had supervised the search of the files.

Mr. HEYMANN. I don't think I was greatly concerned about that, but I certainly wanted it to be clear that we had not supervised any search, and so I directed that we clarify that.

Mr. BEN-VENISTE. At your deposition, I believe we showed you a newspaper article which appeared in The Washington Post on July 23rd which stated, "Foster's office was searched yesterday in the presence of officials from the National Park Service, the Justice Department, the FBI and the Secret Service according to the White House." The next paragraph stated, "Under the supervision and in the presence of a Foster family lawyer, White House Counsel Bernard Nussbaum examined the office and found no suicide note or any other document bearing on the death, a White House statement said." You didn't see the actual White House statement at the time of your deposition?

Mr. HEYMANN. No, but by mistake, Mr. Ben-Veniste, I'm sure, you've missed reading something that you showed me the other time because what you showed me said under the supervision of the Department of Justice, the Park Police and the FBI.

Mr. BEN-VENISTE. It said under their supervision?

Mr. HEYMANN. Yes.

Mr. BEN-VENISTE. I'm sorry if I misread it.

Mr. HEYMANN. Maybe I didn't hear you, but the piece does say that the search was conducted under their supervision, "their" being the Department of Justice, the Park Police and the FBI.

Mr. BEN-VENISTE. We have received from the White House in a much earlier transmission of documents, along with all of the other documents they've provided us, a document which is designated Z447 which we can make a part of this record which is the release called, essentially, "Responses to Taken Questions, Thursday, July 21, 1993" which says that "Nussbaum then conducted a thorough search of Foster's office. No suicide note or other document bearing on his death was discovered."

Simply in fairness, it may have been the reporter's assumption that the search was "under the supervision of" rather than the White House making such a statement.

Mr. HEYMANN. I know of nothing inconsistent with that.

Mr. BEN-VENISTE. OK. From the time that you had your conversation with Mr. Nussbaum, what was Mr. Nussbaum's response to you?

Mr. HEYMANN. The conversation on the night of——

Mr. BEN-VENISTE. Yes, sir.

Mr. HEYMANN. —the 22nd?

Mr. BEN-VENISTE. Yes.

Mr. HEYMANN. I don't remember, Mr. Ben-Veniste, other than he didn't say, "No, we didn't have any understanding, no, no, Phil, you are misconstruing what happened." He didn't say anything like that. I mean, he was sorry I was upset and when I asked him why

would he have done this, was there something he was hiding, he said, "No, I promise you not."

Mr. BEN-VENISTE. Now, from the 22nd until the note was revealed—the existence of the note was revealed to the Department of Justice on the 27th—you've indicated that Mr. Margolis, at your direction, was keeping an eye on the investigation, keeping in contact with the Park Police?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. If I understand your testimony, the Park Police in that interim did not complain to Mr. Margolis about the White House cooperation?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. Now, following the search on the 22nd, you understood, did you not, from Mr. Adams and Mr. Margolis when they reported back to you, that Mr. Nussbaum had designated documents and items to be turned over to the Foster family attorney?

Mr. HEYMANN. Yes.

Mr. BEN-VENISTE. You weren't surprised by that, I take it?

Mr. HEYMANN. I wasn't surprised. I have a lot of confidence in Mr. Margolis' judgment. He said he thought that was a wise decision.

Mr. BEN-VENISTE. If I understand your testimony, you were not surprised by the fact that there were a number of files of a personal nature of Mr. and Mrs. Clinton, real estate and other files, tax files and the like, that Mr. Foster had in his office at the time?

Mr. HEYMANN. I think I was aware that Mr. Foster was also serving as the personal attorney of the Clintons for some matters, yes.

Mr. BEN-VENISTE. That in connection with the materials, whether he was serving as personal attorney or whether he was working on personal papers in connection with filling out official obligations, it did not surprise you to learn that there were personal files of Mr. and Mrs. Clinton in Mr. Foster's office?

Mr. HEYMANN. I was not surprised.

Mr. BEN-VENISTE. That those files were to be turned over to the Clinton personal attorney now that Mr. Foster had died?

Mr. HEYMANN. I thought it was a very good idea that the first thing Mr. Cutler did when he came in was to separate off personal from official and political; official and political being in the office perhaps, personal elsewhere. I would have thought it was a good idea. I knew that Mr. Margolis had asked at the end of the day on the 22nd that the files be retained.

Mr. Margolis had been dissatisfied with the way the review had gone, and he had wanted the files to be retained. He had told me that Mr. Nussbaum had said no, he would not. The thought was if they were retained, we would at least have another crack at them if we wanted. Mr. Nussbaum said no, it would be too disruptive of business, and he could no longer secure the office and retain the files.

Mr. BEN-VENISTE. So you understood——

Mr. HEYMANN. I understood what was happening.

Mr. BEN-VENISTE. —what was happening and that the personal files would go to the personal attorneys?

Mr. HEYMANN. Yes.

Mr. BEN-VENISTE. Now, at some point did you understand that the Park Police were able to review the materials that were identified as being of interest to the police during the search on the 22nd?

Mr. HEYMANN. I don't think I ever addressed it directly, but I assumed that was so.

Mr. BEN-VENISTE. Yesterday, we had testimony from the Chief of the Park Police, Chief Langston, and Captain Hume, who was in charge of that investigation, who testified that they saw all of the material that they had requested. Does that comport with your understanding?

Mr. HEYMANN. Yes.

Mr. BEN-VENISTE. At some point after you had had your conversation with Mr. Gergen, you understood that, again, the Park Police and the investigative authorities, the FBI, were satisfied with the cooperation of the White House?

Mr. HEYMANN. I heard that the Park Police thought there was a dramatic turnaround in the cooperation they were getting, and they were satisfied.

Mr. BEN-VENISTE. In connection with the request that you made that the FBI get involved once the torn-up note had been found, I take it by this time you had identified a number of things that you thought could have been done better and were creating the absolutely wrong appearance from the standpoint of how the White House was handling this?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. You directed Mr. Margolis, if I understand you correctly, to get the FBI to do a vigorous investigation of the circumstances surrounding the finding of the note?

Mr. HEYMANN. Exactly.

Mr. BEN-VENISTE. I think you referred to it as the 800-pound gorilla that would now be introduced onto the scene?

Mr. HEYMANN. I think that's right.

Mr. BEN-VENISTE. Now, were you surprised to learn thereafter that what the FBI did in following through the directive that you gave to Mr. Margolis was to open an obstruction of justice investigation?

Mr. HEYMANN. I was a little surprised. I should have been aware that they have to have a crime title under which to investigate anything. I probably wrote the regulation under which requires them to have that. I simply thought this is a time where I want the FBI to go in and find out whether that note was actually found in the way it was described, and since it was a question of whether the note had been found then, they opened it up as obstruction of justice. I was surprised.

Mr. BEN-VENISTE. Was it——

Mr. HEYMANN. I don't object to it, but I was surprised.

Mr. BEN-VENISTE. You felt that that was a little harsh under the circumstances?

Mr. HEYMANN. Yes, I think it suggested misbehavior that I did not personally think was likely.

Mr. BEN-VENISTE. Indeed, at the conclusion of the investigation, it was determined that there was no reason to conclude there was any misbehavior?

Mr. HEYMANN. That's correct.

Mr. BEN-VENISTE. But your intention in getting it started was to make it clear that you wanted a vigorous, immediate and pointed review by the FBI of these circumstances?

Mr. HEYMANN. That is correct.

Mr. BEN-VENISTE. Now, in terms of the material that the investigators—even under your procedure—would have reviewed in the White House, in Mr. Foster's office, is it absolutely clear, in your view, that they would have had no interest in looking at any file that said Clinton tax 1992, real estate investments, Whitewater or any such substantive file?

Mr. HEYMANN. It's clear to me as a practical matter that they would not have looked at such files or sought such files. They would have been prepared to treat them as not relevant to Vince Foster's death.

Mr. BEN-VENISTE. Finally, we have discussed in this Committee the fact that some electronic communication from David Margolis to you had been leaked to the press, and it was leaked in a way that really disguised the nature of the communication. The top heading of the communication was removed from the material that was leaked. Are you familiar with the E-mail communication from Mr. Margolis?

Mr. HEYMANN. Yes, I've seen it now a couple of times.

Mr. BEN-VENISTE. Could you describe to this Committee, please, what your understanding was of the creation of that document?

Mr. HEYMANN. I knew we would have a press conference on the occasion of revealing the results of the Park Police and the FBI investigations. I don't specifically remember it, but I would have asked Mr. Margolis to help me prepare by coming up with the—if you would like—nastiest, dumbest questions that I could be asked. He produced a list and, I guess, sent it to me. I've certainly seen it before.

Mr. BEN-VENISTE. I take it from the answers in your deposition it exceeded your expectations in terms of nasty and dumb?

Mr. HEYMANN. That's correct. There was nothing so mean-spirited or so foolish that I could be taken by surprise after Mr. Margolis' list of mock questions.

Mr. BEN-VENISTE. I have nothing further at this time.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Senator D'Amato. It's nice to see you again.

Mr. Heymann, you've had a great deal of experience in Watergate investigating some of the Carter Administration problems. You've had some involvement in reviewing the way the Clinton White House handled the so-called Travelgate problems. In fact, I think, if I characterize it correctly, you think the White House handled those in a fairly clumsy fashion?

Mr. HEYMANN. Yes.

Senator HATCH. In other words, when you heard of Mr. Foster's death, if I interpreted it correctly, you did not want the White House meddling in a normal investigation by using an ad hoc questionable set of methods similar to those they used in Travelgate; is that a fair characterization?

Mr. HEYMANN. I don't think it is, Senator Hatch, because——

Senator HATCH. I may be putting it in a little more colorful terms. I don't know.

Mr. HEYMANN. —I knew that there are problems built into any investigation——

Senator HATCH. In essence, but in essence——

Mr. HEYMANN. —involving evidence in the White House. I didn't think it was meddling for the White House to be very concerned about the confidentiality of its papers. I also don't——

Senator HATCH. Let me rephrase——

Mr. HEYMANN. —think the White House should decide the balance between law enforcement and confidentiality itself.

Senator HATCH. Sure. Let me rephrase. You wanted law enforcement officials to follow normal procedures in investigating Mr. Foster's death without the direct involvement of Justice Department lawyers?

Mr. HEYMANN. Yes, that's correct. I would have liked——

Senator HATCH. In other words, you wanted the Park Police and the FBI to do the investigation?

Mr. HEYMANN. I would have much preferred if Justice was nowhere near it.

Senator HATCH. You did not want allegations to come up later that there was undue political influence or anything that might be looked upon as improper?

Mr. HEYMANN. That's correct.

Senator HATCH. As I understand it, you felt the role of the Justice Department lawyers you sent over there was basically to manage and mediate the process of deciding what documents would be protected?

Mr. HEYMANN. That's right, Senator Hatch.

Senator HATCH. That was basically their role?

Mr. HEYMANN. That was their role.

Senator HATCH. So on the morning of July 21, you decided to send Mr. Margolis and Mr. Adams to the White House. As I understand it, you sent them because they were career prosecutors and they would be perceived as being beyond reproach in this case; right?

Mr. HEYMANN. Yes, and not people who would be likely to disclose—even to me—anything that they saw.

Senator HATCH. Before you sent Mr. Margolis and Mr. Adams to the White House, you made an arrangement—or I don't know how you referred to it, but at least I think you once called it a methodology to carry out the investigation with Mr. Nussbaum; is that correct?

Mr. HEYMANN. Yes. Senator Hatch, I don't have in my phone records a record of my conversations with the White House that day, and I don't specifically remember whether I talked to Margolis and Adams as to how it should be done and then they negotiated that at the 5:00 meeting that day. I think that I must have talked to Mr. Nussbaum before that because I would have had to explain why I was sending Adams and Margolis over, and Mr. Margolis' memory is that I had had such a conversation and the understanding predated their going over.

Senator HATCH. In response to Senator Shelby, you said you reached a sensible agreement with Mr. Nussbaum?

Mr. HEYMANN. That's correct.

Senator HATCH. In other words, a sensible way to proceed?

Mr. HEYMANN. That's correct.

Senator HATCH. That's basically what I'm talking about. You thought it was important to have Department of Justice lawyers involved in the search of Mr. Foster's office?

Mr. HEYMANN. That's correct.

Senator HATCH. Is it fair to say you were worried, number one, that executive privilege and law enforcement are really hard to balance?

Mr. HEYMANN. Yes.

Senator HATCH. Number two, that there would be political attacks and conspiracy theories of a coverup if it wasn't handled right?

Mr. HEYMANN. Yes.

Senator HATCH. Number three, that the Justice Department would retain the appearance, in reality, of unbiased law enforcement?

Mr. HEYMANN. Yes.

Senator HATCH. Those were your main considerations?

Mr. HEYMANN. Those were my main considerations.

Senator HATCH. You assumed the executive privilege would be claimed over at least some of the documents?

Mr. HEYMANN. Yes.

Senator HATCH. That there might be a conflict between claims of executive privilege and valid law enforcement goals?

Mr. HEYMANN. Yes.

Senator HATCH. Further, you knew from the reading of the Supreme Court decision in United States v. Nixon, the case involving the earlier White House scandal, the White House tapes, that if there were a conflict, that law enforcement needs would trump executive privilege?

Mr. HEYMANN. Yes.

Senator HATCH. In fact, the Supreme Court concluded that the President's interest and confidentiality "cannot prevail over the fundamental commands of due process of law and the fair administration of criminal justice."

So you were afraid or at least concerned that some in the Justice Department might make the same mistake that Nixon did in initially resisting these fundamental demands of the law enforcement people. Is that fair?

Mr. HEYMANN. I think that goes a little bit astray, Senator Hatch.

Senator HATCH. OK.

Mr. HEYMANN. To whatever extent we could identify specific documents as very likely bearing on Vince Foster's death, there, I think, law enforcement interests would have trumped executive privilege. But we were not able to identify them at that stage, and if we had simply gone over and said give us all your documents, I think Mr. Nussbaum would have quite properly and legally said no, we have an executive privilege, and until you identify what you want, we don't have to give you all the documents.

Senator HATCH. Unless you had an opportunity to participate in the identification, you couldn't really tell them what you want.

Mr. HEYMANN. That's why I wanted the process that we were proposing.

Senator HATCH. You said you could not get a subpoena for all the documents in Mr. Foster's office. But you could have subpoenaed the file indices, if you had wanted to, simply to determine whether or not there might be some documents relevant to Mr. Foster's death. That was a possibility; right?

Mr. HEYMANN. To be honest, Senator Hatch, I don't actually know what the file indices there——

Senator HATCH. But if they were there, you could have subpoenaed those?

Mr. HEYMANN. I don't know how revealing they are. I honestly don't know anything about the file indices. If they were revealing, we might have faced the same claim.

Senator HATCH. Sure. But if the White House had received such a subpoena, wouldn't it have been the Office of Legal Counsel within the Department of Justice who would have had to work out the difficulties with regard to executive privilege?

Mr. HEYMANN. Once we got to a place where there was a dispute over particular documents of any sort, I thought at that time that we might very well turn to the Office of Legal Counsel and the Justice Department for a legal reading on it because you don't go to court when you're talking about the Justice Department and the White House.

Senator HATCH. Were you aware that Mr. Margolis told Mr. Spafford that he might get a subpoena under the umbrella of the Federal assassination statute? Are you aware of that?

Mr. HEYMANN. I saw Mr. Spafford's testimony on television, but I was not aware of it before that.

Senator HATCH. In any event, you would agree that Mr. Foster's death was of considerable concern to the highest level of the Executive Branch and the Justice Department—frankly, almost everybody else; right?

Mr. HEYMANN. Again, trying to be accurate, if it was anything other than a suicide, it would be of immense concern. If it was a suicide, it was more a personal tragedy than anything else.

Senator HATCH. The Park Police was treating this, as far as you know, as a suicide; right?

Mr. HEYMANN. Yes, but the reason you do an investigation of a suicide is to satisfy yourself that you're dealing with a suicide and not a homicide.

Senator HATCH. Sure. What might have occurred if the Park Police had sought a subpoena for Mr. Foster's handwritten notes, for instance?

Mr. HEYMANN. They didn't know that those existed, Senator Hatch.

Senator HATCH. No, but they could have presumed they existed, and they could have sought a subpoena to get the handwritten notes and gotten that subpoena relatively easy?

Mr. HEYMANN. They could have gotten a subpoena for any handwritten notes that seemed to be notes of despondency or anything that would bear, obviously, on whether he committed suicide.

Senator HATCH. But if a subpoena had been issued or served, then it would have been possible for a judge to make the relevant determinations as to what was privileged and what was not?

Mr. HEYMANN. If a subpoena had been served for specific documents, perhaps. If we had been able to identify specific documents, a judge would have——

Senator HATCH. Made those determinations?

Mr. HEYMANN. I think so. There's obviously a considerable problem as to what a judge would do if the Justice Department were suing the White House.

Senator HATCH. Sure. By sending over Department of Justice lawyers, you were attempting to have a neutral—at least on its face—a neutral party determine the privilege?

Mr. HEYMANN. That's correct.

Senator HATCH. You mentioned that we might not have gotten any more documents if a subpoena had been issued; that that may have been the case. But at least you were trying to do a neutral determination as the appropriate leader in the Justice Department.

I think what I'm saying is, an independent party would have received the documents, but that never occurred. What we still don't know is what's happened to a whole number of these documents, and part of that is because there was no neutral party, really, looking at these and all you had worked out was looking at the first page to see if they were relevant or not.

Mr. HEYMANN. If we had done that, we would not have compromised executive privilege to any significant degree, and we would all know what was there and what was not there.

Senator HATCH. As a part of the Executive Branch of Government, which the Department of Justice was, and is, you were sending over lawyers to, in other words, protect the President by sparing him from claims of a biased or politically motivated investigation; right?

Mr. HEYMANN. That's correct.

Senator HATCH. Now, after Mr. Margolis and Mr. Adams went to the White House to meet with Mr. Nussbaum, they then came back and discussed the meeting with you?

Mr. HEYMANN. Yes.

Senator HATCH. They told you, did they not, that Mr. Nussbaum agreed that it would be proper for the Justice Department lawyers to review the documents with him; right?

Mr. HEYMANN. Yes——

Senator HATCH. In response to Senator Shelby——

Mr. HEYMANN. —in the limited way you described.

Senator HATCH. Right; in the limited way I described and has been described in prior hearings here. In response to a question from Senator Shelby, you mentioned that Steve Neuwirth, who also worked in the White House Counsel's Office, disagreed with the agreement you had reached with Mr. Nussbaum; right?

Mr. HEYMANN. That's what I was told by Margolis and Adams when they——

Mr. BEN-VENISTE. You were also told that Nussbaum overruled Neuwirth at that time?

Mr. HEYMANN. That's correct.

Senator HATCH. Do you recall discussing with Mr. Nussbaum the manner in which the Travelgate matter was handled?

Mr. HEYMANN. I don't remember discussions about that, Senator Hatch, certainly not on this occasion. At some point I might have had discussions, but I don't remember them.

Senator HATCH. But, in any event, you sent Margolis and Adams over to review the documents with Mr. Nussbaum the very next day?

Mr. HEYMANN. That's correct.

Senator HATCH. Things did not go as planned?

Mr. HEYMANN. Correct.

Senator HATCH. In fact, Nussbaum reneged on the agreement that he had made with you the day before?

Mr. HEYMANN. Again, I had no problem at all with his changing his mind the next day. I didn't think he had promised in a sense that kept him from changing his mind, but he said we'll do it differently than we thought——

Senator HATCH. He reneged on—to use your prior language—the methodology that you had agreed on in the investigation?

Mr. HEYMANN. He changed that.

Senator HATCH. When you spoke with Mr. Nussbaum on the phone, you said you were pretty darn angry. You were angry?

Mr. HEYMANN. I was angry because he went ahead and did that without giving me an opportunity to have an input into the fairness of the process and while suggesting that Justice Department attorneys approved of that type of process.

Senator HATCH. You went further than that. You even said that you wouldn't let Margolis and Adams remain at the White House if he refused to honor the agreement he made the day before?

Mr. HEYMANN. It wasn't for refusing to honor an agreement; I said I might very well pull them out if they were going to have no significant role in the review because it would look like they were doing something when they weren't.

Senator HATCH. May I have a little more time? It's a quick line of questions.

The CHAIRMAN. We do have four of the Senators waiting so if you hold it down to 2 minutes, we'll see if you can finish.

Senator HATCH. I'll try to do that.

Let me jump to another factor. You were concerned about lending the Department's credibility to the so-called document review?

Mr. HEYMANN. That's correct. Unless it was done in a way that I thought was proper.

Senator HATCH. In fact, your fears came true when shortly after the review, The Washington Post erroneously reported that the document review had taken place under the Justice Department's supervision; right?

Mr. HEYMANN. Correct.

Senator HATCH. You were concerned enough about that—the impression that had been left in the minds of the public that the Department had, in fact, supervised the search when it had not—that you had a press statement released indicating that the Department had not supervised the document review?

Mr. HEYMANN. I directed that some form of press clarification be done. To this day I don't know if it was done in the form of a press release or——

Senator HATCH. But you didn't want the Department of Justice to come under question is what you were trying to do?

Mr. HEYMANN. I wanted to be clear—I wanted to be very carefully accurate as to what we had done and not done.

Senator HATCH. When you talked to Mr. Nussbaum later, did you tell him that you were suspicious that he was hiding something?

Mr. HEYMANN. I think I just spontaneously said that the change surprised me. I said Bernie, are you hiding something? I've known Mr. Nussbaum for a long time and he said very flatly, "No, Phil, I can promise you we're not hiding anything."

Senator HATCH. But you were upset because, number one, he had not lived up to the methodology of review and number two, he didn't call you back when he said he would?

Mr. HEYMANN. Also, number three, the methodology that was used was one that looked to me to be not very convincing and reliable.

Senator HATCH. It was fraught with problems?

Mr. HEYMANN. That's correct.

Senator HATCH. Partly resulting in these hearings?

Mr. HEYMANN. Correct.

Senator HATCH. Thank you. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much.

The CHAIRMAN. I wonder if the Senator's microphone is working?

Senator BRYAN. Testing one, two.

The CHAIRMAN. I don't think so. Maybe you can pull another one over.

Senator BRYAN. Is this one working?

The CHAIRMAN. Yes, it is.

Senator BRYAN. Mr. Heymann, as I listen to your testimony this morning, as I read your statement, it seems to me that what you are describing for us all is essentially a public policy conflict. On the one hand, you are concerned, which I think all of us can acknowledge to be legitimate, that if the Department of Justice was to be involved, you wanted it to be a fair and credible evaluation. Am I not correct, sir?

Mr. HEYMANN. I did.

Senator BRYAN. You would acknowledge, indeed, from the perspective of the White House Counsel, there were some equally legitimate public policy concerns: The questions of executive privilege, questions of attorney-client relationships, those are legitimate as well?

Mr. HEYMANN. Those are also legitimate concerns, yes, Senator Bryan.

Senator BRYAN. I think you've also given us a helpful context that this policy which you've described in some detail and in many different ways for each of us as we've asked these questions in dif-

ferent ways is not anything unique to the circumstances that happened in the aftermath of the tragic suicide of Vincent Foster, but if I recall your testimony you've given us, based upon your experience over many years, these are essentially policy conflicts that every Administration from the time of Dwight Eisenhower at one time or another have had to deal with?

Mr. HEYMANN. I believe that to be exactly right, Senator Bryan.

Senator BRYAN. I must say one would think after all of these vast experiences through Republican and Democratic Administrations, that we might have gotten some understanding as to how a policy might evolve, but I recognize, as do you, that there are legitimate gradations as to where you draw that line.

Mr. HEYMANN. White House staff have no memory, Senator Bryan. There's no carry-over from one decade to another or from one year to another, one Administration to another. Each one starts fresh and makes the same mistakes. One of the triumphs of our system.

Senator BRYAN. I don't want to belabor the line of questioning and the colloquy that you and Senator Hatch were involved in, but, again, to put this into some perspective: your angry. You had not a meeting of the minds. You're reluctant to embrace that concept, but I think it's fair to say you had an understanding as to the protocol as to how this examination process would occur?

Mr. HEYMANN. On the night of the 21st, Mr. Nussbaum, myself, Margolis, the Park Police and Adams all had the same idea as to what was going to happen on the 22nd.

Senator BRYAN. If Mr. Nussbaum had called you later on that evening or in the morning before Mr. Margolis and others went over there and said look, I've had second thoughts about that; I believe that I may, in fact, by so agreeing to this process that I have waived a privilege which I do not want to waive or offered any other explanation, you might not have agreed with the explanation, but you would have acknowledged Mr. Nussbaum was certainly within his rights to express such a change of mind, and you would not have been angry had you had such a discussion?

Mr. HEYMANN. That's right. If he had done that, Senator Bryan, I would have had an opportunity to discuss whether there was a waiver problem. I might have said we'll give you a written document promising that we will not take this to be waiver, which would have helped.

Senator BRYAN. In effect, that would have given you an opportunity to continue the dialog, to hear him out as to the nature of his concern and, perhaps, you might have even agreed with him?

Mr. HEYMANN. That's correct. We could have had a dialog and we should have come to some form of agreement.

Senator BRYAN. But what made you angry—and I think understandably so—is you received no such call?

Mr. HEYMANN. That's correct.

Senator BRYAN. That your staff, in effect, went over and the process which you understood was going to be the basis of the evaluation did not occur and that thereafter—these are my words, not yours, and please disagree with them if I've inaccurately characterized them—you felt that the Justice Department had been used unfairly?

Mr. HEYMANN. Exactly.

Senator BRYAN. To, in effect, suggest that they had participated in the process, and you did not feel, based upon the understanding that you had, that that would be a fair, accurate characterization?

Mr. HEYMANN. Yes.

Senator BRYAN. In effect, what you were looking for—to put this, again, in some focus—you were not interested in a wide-ranging examination of everything; you were really looking, were you not, into any type of evidence that might bear on the point as to what Mr. Foster's state of mind might have been that would be relevant to the suicide—at this point let's assume or call it a presumption of suicide—or what appeared to be the case under those circumstances?

Mr. HEYMANN. That is absolutely correct, Senator Bryan.

Senator BRYAN. You didn't have any interest in the Clintons' personal files, whatever they may have been?

Mr. HEYMANN. None.

Senator BRYAN. Whether they were tax files?

Mr. HEYMANN. We would not have asked for them.

Senator BRYAN. Whether they were Chelsea's grades at school or any other personal kinds of information that might have been in the office?

Mr. HEYMANN. We would not have asked for any of that.

Senator BRYAN. You were not particularly interested in ferreting out to see if there were any Whitewater files in Mr. Foster's office?

Mr. HEYMANN. I didn't know what Whitewater was at that time, Mr. Bryan. Nor did the investigators.

Senator BRYAN. That has been attested to, I'm sure, in depositions and sworn testimony. So, in effect, you were just interested in the process?

Mr. HEYMANN. I was interested in our being able to get anything that bore pretty directly on the cause of Mr. Foster's death. That would be a suicide note, despondency, medical records or problems of any sort that might lead people to commit suicide.

Senator BRYAN. Since, as you point out, there seems to be an absence of institutional memory that is not confined to any Administration based upon its political affiliation, but it seems to be bipartisan or nonpartisan, what should the process be—and I know you tried to work out this protocol, Mr. Heymann—but what, prospectively, what should the process be?

Mr. HEYMANN. Senator Bryan, I actually think we had it about right. I think each White House staff from each Administration is very suspicious of career Government employees, including career attorneys. I think the suspicion is never warranted. I know these people very well and they behave loyally to Republicans and Democrats, Conservatives and Liberals, one after the other. I think a very sensible process for a situation like this was to have highly respected career attorneys learn just enough, not much, but just enough about every document to determine whether there was something there that investigators ought to have. I think if they had gone through that, in all likelihood—I don't have any idea because I don't know what was in the office—but it's quite possible that they would have found practically nothing that they felt would

have helped with the investigation. They would have found the note that was found 4 days later, and that would have helped.

Senator BRYAN. Recognizing that not only are you a highly experienced public servant who has served a number of years in a number of different capacities, but also a law professor as well, is there a legitimate concern as to the waiver of any of these privileges? In other words, I guess I would ask as a followup—and this is more informationally for me—how much do you show?

I understand exactly where you're coming from, that you want this to be a fair and credible process. I think all of us would agree with that. On the other hand, at what point do you reach—in terms of the specifics, not the abstract, but the specific—you've got a document, how much is to be seen? At what point is there the legitimate concern that maybe you've waived a privilege or you've shown something that may indeed involve a national security concern that only the President and his Administration and the policymakers should see?

Mr. HEYMANN. With regard to the waiver problem, it probably is worth having the Department of Justice look at it seriously, but I think that showing a limited amount of the document generally does not amount to waiver.

Showing the document to the Department of Justice might very well not amount to waiver of executive privilege by the President because this is part of the Executive Branch, and an agreement that the Department of Justice would not take as waiver being shown part of the document would be a binding agreement.

For all those reasons, I think the waiver problem could have been resolved, and it could have been called to our attention.

Senator BRYAN. May I ask one more question?

The CHAIRMAN. Sure.

Senator BRYAN. I know the red light is on, but we've been given a little latitude here. You've known Mr. Nussbaum for a number of years, have you not, Mr. Heymann?

Mr. HEYMANN. I have, sir.

Senator BRYAN. He's been variously described as a New York litigator, which I interpret to mean a very aggressive, tough, strong guy. Is that a fair characterization of his personality?

Mr. HEYMANN. Mr. Nussbaum is, in personal contact, a warm and engaging and not at all threatening individual. I would suspect that as an attorney representing a client and dealing across the table from another attorney, he would probably be dynamite, aggressive, tough and exactly what you would like to have representing you, Senator Bryan.

Senator BRYAN. I suspect, Mr. Heymann, you are also an engaging personality. I suspect in an adversarial context, you would be equally strong, forceful, aggressive and, I must say, persuasive, just hearing what you had to say this morning.

In your opinion, Mr. Nussbaum having the change of mind that he had, do you have any question in your mind but that that was just an honest change of view as to what he ought to agree to do even though he did not handle the communication process well?

Mr. HEYMANN. Because he told me that he wanted to talk to people, I think he probably had a lot of opposition. I think people must

have said to him you've given much too much, but that's just speculation on my part.

Senator BRYAN. But you don't question his motive?

Mr. HEYMANN. I don't question his motive. I just have no knowledge beyond what I've said here. I have no idea what was in the file, what people were concerned about. I know nothing on the inside at all.

Senator BRYAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Mr. Heymann, I want to go back to the meeting that took place at the White House on the 27th, I believe with you and the Attorney General?

Mr. HEYMANN. I'm just checking—yes, on the 27th.

Senator MACK. I'm focusing on this as a result of listening to the discussion that's taken place this morning. First, is the issue—I guess the surprise that I have that 30 hours or 36 hours or more went by before the White House really contacted anyone outside the White House with respect to this note. In response to one of Senator Shelby's questions, I think you indicated that there was a discussion at that meeting that there was a consideration by the President of executive privilege with respect to that note.

Let me go a couple points more and you'll get a sense of where I'm trying to go with this. Again, mentioning executive privilege on a note which I think was the subject of what everybody had been discussing for days seems to me to be a stretch. I must tell you I'm not an attorney. There are a lot of aspects to these legal issues that I don't understand, but I guess what I'm asking you is were you surprised at all that, given 30 hours had gone by and that you had come over with the Attorney General, there was a discussion that maybe the President wasn't going to turn over this note?

Mr. HEYMANN. Senator Mack, I agree with what you're getting at, but I've put together two things that I shouldn't have put together. There was no discussion of executive privilege that I remember on the occasion of the night of the 27th. From the FBI investigation of when the note was found, how it was found, the investigation I ordered, I know that the agents were told that there was a discussion of executive privilege that also delayed things. Having said that and making clear that did not take place in front of me on the 27th, I thought it was ridiculous to be worried about executive privilege on that note.

Senator MACK. I want to go a little bit further, and I must tell you I'm pursuing this as well because I read Cynthia Monaco's deposition.

Mr. HEYMANN. You have the advantage on me there, Senator Mack.

Senator MACK. I don't know that it's particularly important that you see it.

Mr. HEYMANN. No, no.

Senator MACK. It's referring to a conversation that, when you got back from the White House, you had with her. It's describing the feelings you had for the Attorney General for seeing right through

all of what was being said, that she went to the heart of the matter and made the right decision. She's now, in essence, saying what she believed you said or thought—"I don't think it was an easy thing for her to be surrounded by all these important people telling her that there were all these issues and for her to see right through it to the simplicity of just having to call the Park Police and turn over the note." I'm just curious at this point about what that discussion was at the White House. Were there a number of people sitting around in a discussion about various choices concerning what to do with this note?

Mr. HEYMANN. No, Senator Mack. The most there was was a question—I don't even know by whom—what should we do, what should we do with it, and I commented to Cindy Monaco that I was impressed with the quickness of the Attorney General's reaction. She simply said, of course, turn it over to the Park Police immediately. There wasn't a discussion, but the question had arisen, and I've known a lot of Attorney Generals in my time. I could imagine the Attorney General thinking about it and coming to the conclusion 5 minutes later that it should be turned over to the Park Police right away. This was instinctive and immediate, and I was impressed with that.

Senator MACK. There were no alternatives discussed?

Mr. HEYMANN. There were no alternatives discussed.

Senator MACK. There is one last question that I have. I gather, then, you were not informed as to who saw the note?

Mr. HEYMANN. I don't think I understand the question, Senator Mack.

Senator MACK. I'm curious as to whether there was any discussion during that meeting as to who may have seen the note. Was it, for example—what's triggered this, and you've explained that the executive privilege thing came later——

Mr. HEYMANN. Explanations given to the FBI at a later date.

Senator MACK. But I'm just curious, again, was there any discussion at that meeting as to the question of why 30 hours? I gathered from your earlier testimony that Bernie Nussbaum said he wanted the President to see it; that they couldn't get it to the President until, I think it was 5:00 or 6:00?

Mr. HEYMANN. The second day, yes.

Senator MACK. Was there any discussion about who saw that note?

Mr. HEYMANN. No. I think I assumed that an awful lot of people had seen it in the White House because Vince Foster was a close friend of theirs and they also told me they wanted to get it to Mrs. Foster before getting it to anybody else, and they had had a little trouble getting a hold of Mrs. Foster, too.

Senator MACK. As far as you know, the only two that were mentioned were Mrs. Foster and the President?

Mr. HEYMANN. They were the only ones that were mentioned. There wasn't a list of who was seeing the note. It was the answer to the question why is it taking you 30 hours, and they said we wanted to get it to Mrs. Foster and the President.

Senator MACK. I would yield the balance of my time to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Senator Mack. I want to go back, Mr. Heymann, to some questions that Mr. Ben-Veniste asked you earlier about the legal rights of the White House. I understood you to say in response to Mr. Ben-Veniste's questions that the White House could have taken the position when the Park Police came in and the Justice Department had come in and the FBI came in, stop, you can't come in the office, we're not giving you any access. You didn't feel at that point you could get a search warrant; correct?

Mr. HEYMANN. Correct.

Mr. CHERTOFF. So, at that point, your view was that cooperation was voluntary; right?

Mr. HEYMANN. I'd rather put it in a negative sense, that we could not have gotten a court order that would have gotten us in, yes.

Mr. CHERTOFF. On the other hand, had they barred the door, so to speak, it would have become plain and publicly evident that the White House was adamantly refusing to cooperate in what, on the surface, looked like it should have been a very cooperative, nonadversarial inquiry; right?

Mr. HEYMANN. That's correct.

Mr. CHERTOFF. It would have sent alarm bells ringing in the heads of many reasonable people; correct?

Mr. HEYMANN. Correct.

Mr. CHERTOFF. That would have imposed a very substantial cost in terms of the credibility of the White House in the eyes of ordinary American citizens; right?

Mr. HEYMANN. Yes.

Mr. CHERTOFF. By bringing the Justice Department in and creating window dressing, the White House was able to have its cake and eat it too, so to speak?

Mr. HEYMANN. Not for very long, Mr. Chertoff.

Mr. CHERTOFF. At least it looked like they tried to do it that way; right?

Mr. HEYMANN. I'd rather not characterize——

Mr. CHERTOFF. I won't put you on the spot. Let me go on and ask you this: Supposing that the Department had decided to request a subpoena for documents, Senator Hatch raised the possibility that there could have been a subpoena issued for handwritten notations by Mr. Foster, and I take it that that would at least be a category of documents that, on the surface, suggests a possible relevance; right?

Mr. HEYMANN. I'm not sure, Mr. Chertoff, because who knows how much he did in handwriting. In other words, if he generally worked by dictation, then it would be a sensible category perhaps to say please give us any handwritten documents. If, like Archibald Cox, he spends all of his time writing in longhand, then it would have been too broad.

Mr. CHERTOFF. Now, you do agree that if there were at some point some indication of a way to narrow a request, it would then become quite feasible to get a subpoena from a court; right?

Mr. HEYMANN. If we had a narrowed request, there would have been a judicial process of balancing the investigative need against

the invasion of privacy, and the law enforcement people, it seems to me, are very likely to win if they have a good case there.

Mr. CHERTOFF. If, for example, Mr. Margolis and Mr. Adams had been able to review at least the surface page or pages of documents in Mr. Foster's office, they might have found, for example, the loose-leaf notebook or spiral notebook with handwritten notes by Mr. Foster that we now know is related to Travelgate. We also now know that Travelgate, based on the writing that was later found, is arguably quite relevant to Mr. Foster's state of mind; right?

Mr. HEYMANN. Correct.

Mr. CHERTOFF. But not having an opportunity to look at this document when the note was ultimately turned over to you and the Attorney General, you were not in a position to know that there were other documents in the office that quite possibly had become very relevant. Is that fair to say?

Mr. HEYMANN. I think that's fair to say.

Mr. CHERTOFF. Now, let me turn to something else.

The CHAIRMAN. Michael, I would rather give you more time on your time——

Mr. CHERTOFF. This is a good point to stop.

The CHAIRMAN. —because we are over.

Senator Sarbanes.

Senator SARBANES. Senator Moseley-Braun—Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Actually, I have a few questions and then, if I could, I'll yield to Senator Moseley-Braun. I want to go back to the conversation you had the evening of the 22nd with Nussbaum where you previously commented about what he responded when you asked him if he was hiding anything. I want to get back to that question because I think that's really the essence of why we're here.

Can you tell me when you asked Mr. Nussbaum if he was hiding anything what his reaction was to that question? Was he shocked that you asked? Was he surprised?

Mr. HEYMANN. I don't think so, Senator Murray. I think the background of the question is that we have known each other and been friends for a very long time and that's why I said how could you have done this, making this change without consulting me? It's also why I would have asked him a question that otherwise I wouldn't have asked somebody: Are you hiding something, Bernie, and he simply said no, he wasn't. The relationship was long enough that he didn't ask me why would you ask me such a question or anything like that.

Senator MURRAY. So he wasn't surprised, and he simply responded that I give you my word, there's nothing like that?

Mr. HEYMANN. Yes.

Senator MURRAY. You took him at his word. You've known him for a long time?

Mr. HEYMANN. My job is to not take friends, White House people, other Department people, in an investigation at their word, but to make sure that the investigation is run as if I didn't know them.

Senator MURRAY. Would it be fair to say that Mr. Nussbaum's response suggested that he was simply struggling with all of the competing demands of the investigation and the——

Mr. HEYMANN. That's exactly what I understood his response to convey, Senator Murray.

Senator MURRAY. I have one other question. You have known Mr. Nussbaum for a long time, and this was obviously the day after a good friend of his had committed suicide. What do you sense was his state of mind?

Mr. HEYMANN. I'm trying to remember whether I saw him during those days, but I assume it was a very severe shock. I think he was very fond of Mr. Foster, I think they worked very closely together and I think it was probably a very tough shock.

Senator MURRAY. Thank you. I'll yield to Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. I don't know if this has been covered or not, but, Mr. Heymann, what is the normal Justice Department procedure with regard to going over White House documents? What would you normally do? Are there procedures? Is there a procedure in place that the Justice Department uses for cases such as this?

Mr. HEYMANN. I don't think that there is any established procedure, and I think it would be very helpful if there was one, Senator Moseley-Braun. For one thing, I don't think that the Justice Department has any procedures for dealing with what appear to be suicides at all. It's opened as a death of an uncertain cause but things are a little different if it appears to be suicide. I don't think the Justice Department has any procedures for those. Fortunately, it's fairly rare, but I don't know of any established procedures for dealing with documents other than to go to old-timers and ask how did we do it last time.

Senator MOSELEY-BRAUN. But you were an old-timer, weren't you?

Mr. HEYMANN. I was an old-timer, yes.

Senator MOSELEY-BRAUN. So with regard to this—again, to call it investigation—at that point, it wasn't really an investigation, per se, in your mind, was it?

Mr. HEYMANN. In my mind I thought in all likelihood this was a suicide, and everybody else has come to the conclusion that it was a suicide. I had seen Mr. Foster at a party just by chance 2 weeks before this happened, and he looked very despondent, and I knew that people around him had been very concerned about his state of mind, and I thought it was probably a suicide. But what I wanted was to be sure that an investigation was done as if it were an unexplained death to determine if it was suicide or not, and done in a perfectly normal way. In other words, I didn't want it to be simply that Phil Heymann thought he looked despondent or something like that.

Senator MOSELEY-BRAUN. So when you say "in a perfectly normal way," that's the question here. Was it your impression at the time that others, specifically Mr. Nussbaum, were acting in a perfectly normal way under those circumstances?

Mr. HEYMANN. I think the conflict came about wholly in terms of White House confidentiality. In other words, I assume the Park

Police had no difficulty in interviewing the nongovernment, non-White House friends of Mr. Foster, his doctor and everybody else. I know that he had an antidepressant prescribed. I think the problem is the White House wanted to manage, by itself, access to White House documents and people. That's not part of most suicides, homicides or unexplained death investigations.

Senator MOSELEY-BRAUN. With regard to managing the White House documents, under the circumstances, given the fact that those documents could range from personal things to national security things, and in the absence of a procedure, is it not fair to say that everybody was making up the rules and making ad hoc judgments as they went along in this?

Mr. HEYMANN. I think that is fair, Senator Moseley-Braun, except that we, Mr. Nussbaum and I, perhaps through the medium of the two attorneys—I don't remember whether it was directly or through them—had arrived at what was obviously a manner of credibly dealing with documents that was fair to both White House privacy and the investigators.

Except for that, which I take very seriously, I think you are correct, and I think it's fair to say that everybody was staggering around a little bit. There was no established procedure for what you do in a suicide case, a likely suicide case, with regard to White House documents. Nobody had experience with that.

Senator MOSELEY-BRAUN. Thank you very much. I have no further questions.

Mr. BEN-VENISTE. Thank you, Senator Moseley-Braun. One thing that Mr. Chertoff mentioned, he held up a notebook with notations relating to the Travel Office. Were you aware that Mr. Nussbaum, during the search of July 22, identified the White House Travel Office materials to the investigators who were present and that the investigators did not indicate any interest in putting that material in the pile to be reviewed?

Mr. HEYMANN. I was not aware of it.

Mr. BEN-VENISTE. That can be found in the notes of Mr. Sloan as well as the notes of Mr. Spafford. With respect to the notion that a category—if you had a basis for a subpoena, which we've established you did not, but even if we're speaking hypothetically—that a category of meaningful distinction could be made in an attorney's office for anything in his own handwriting when you're talking about the attorney for the President of the United States, can you really conceive of any circumstance where such a category could be upheld by a reasonable court?

Mr. HEYMANN. I think, Mr. Ben-Veniste, only if almost everything done that would be entitled to executive privilege was done in some other form, either on a personal computer or by dictation, so that handwritten documents would stand out as personal.

Mr. BEN-VENISTE. Incidentally, were you made aware at some point that Mr. Foster essentially was unable to utilize or at least did not utilize the computer in his office? We've heard testimony from both of the secretaries in that suite yesterday to that effect.

Mr. HEYMANN. Yes, I think I was made aware of that by Mr. Margolis in discussions of the computer.

Mr. BEN-VENISTE. One other point that was brought up, and that was the question of whether Mr. Margolis suggested that Mr.

Nussbaum retain materials in his office in an undisturbed state. Do you recall that Mr. Adams had a different recollection?

Mr. HEYMANN. I honestly don't recall.

Mr. BEN-VENISTE. Let me see if I can refresh your recollection in reading from page 187 of Mr. Adams' deposition of June 29.

Question: And did he interpose any other objections as to what Mr. Nussbaum indicated that he proposed to do in terms of disbursing materials?

Answer: I don't recall Margolis interposing an objection to what he proposed to do with the materials at the end of Mr. Nussbaum's search, but he certainly interposed an objection to the way the search was being conducted.

Question: I understand that. I'm not suggesting he did otherwise. Now I'm focusing at the end of the review of the materials in Mr. Foster's office by Mr. Nussbaum. He indicated that he intended to disburse the materials in the category of personal to Mr. Foster and his family, to Mr. Foster's family representatives, and to those pertaining to personal matters of the President and Mrs. Clinton——

Mr. Adams answers:

Answer: To their personal attorney.

Question: —to their personal attorney. And the other materials to other individuals in the White House Counsel's Office who would then be reassigned the matter?

Answer: That is correct.

Would that refresh your recollection that apparently Mr. Margolis and Mr. Adams had different recollections?

Mr. HEYMANN. It sounds to me like they had different recollections there.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. If you would, I know that Senator Grams will not be able to come back. We have a vote; we have about 6 or 7 minutes, but he tells me that he has a very short question. So with everyone's consent, I would go to Senator Grams for that.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much, Mr. Chairman.

Mr. Heymann, I have just a couple of quick questions. I know we are going to be walking on ground that has a lot of footprints on it, but I know Mr. Ben-Veniste was trying to establish a fair amount of time to say this was just an agreement between him and the DOJ, the Department of Justice, not a contract. But we're not talking about a court of law here. What we're talking about is a court of public perception, and you felt that this was a very important type of agreement that was changed in midstream; is that correct?

Mr. HEYMANN. Senator Grams, I've been trying to make a distinction which I certainly felt between our all having the same idea of how we would do it on day one and being done in a different way on day two. That is plainly correct. I have no doubt about it from my own memory. I'm distinguishing that from some sort of promise that it wouldn't be changed on day two.

I would not have been at all angry or felt that it was unfair if Mr. Nussbaum had called me at 8:00 on Thursday the 22nd and said, "Phil, I've thought about it, and I think it's a mistake to do it the way we agreed yesterday." I wouldn't have said to him, "We agreed; you can't change it." I would have said I think we had it right yesterday; why do you want to change it.

Senator GRAMS. Credibility was very important in your mind, to make sure this investigation was handled with that. The fact that

Mr. Adams and Mr. Margolis was present was going to give it that air or appearance of credibility even though, like you said in your statement, you felt they were being misused?

Mr. HEYMANN. We only deserved to have that credibility if they played a significant role in reviewing the documents.

Senator GRAMS. One final question. I want to go to the meeting at the White House on the 27th when you gave Attorney General Reno credit for immediately saying the note should be turned over to the Park Police. Although it had been held for 30 plus hours, saying that they wanted to show it to Mrs. Foster and the President first, questions of executive privilege, but as the Park Police said they had the responsibility of notifying her of Mr. Foster's death, don't you think they would have been the organization that should have been taking the note to her at the same time and not the White House?

Was the White House interjecting itself in part of this investigation that should have been the Park Police's responsibility?

Mr. HEYMANN. With a weak, not-very-morally loaded "should," I think they should have handled that—I think they should have taken that note right away to the Park Police and they could have simultaneously tried to do something else with it. The only problem with giving it right away to the Park Police would be if it leaked to the newspapers, and then I would think that would be a shame to have Mrs. Foster reading about a note that's found in the newspaper before you get it to her. But if you could do it in any way that would give some assurance against a leak, they should have turned it over right away.

Senator GRAMS. Thank you very much, Mr. Heymann.

The CHAIRMAN. We're going to take a break, but before we do I want to ask you one question because we have 3 minutes on the vote. I would turn to your statement, Mr. Heymann, on page 4, the one you submitted today.

Mr. HEYMANN. The problem is I have it in big type and you have it in little.

The CHAIRMAN. Right toward the end, the last full paragraph, which starts with "What I was trying to do." Let me read with you.

> What I was trying to do during the late days of July 1993 was to develop a reasonable, fair and credible way to assure that, in an investigation of what seemed even then to be a suicide, the investigators had any information that might be important to their investigation, without disregarding legitimate claims of the White House to confidentiality.

So you wanted a credible investigation without disregarding the legitimate claims of the White House confidentiality. That's the essence of what you wanted?

Mr. HEYMANN. That's the essence of what I wanted.

The CHAIRMAN. Was this a credible investigation with respect to the search of the documents in Mr. Foster's office? That is the $64 question, Mr. Heymann, and I don't believe—based on the facts and information that you have recorded and your own notes, you said I'd like you to do all these things so we can avoid coming here, and now I have to ask you that question.

Mr. HEYMANN. I am not surprised that the investigation, conducted as it was, led to hearings, Senator D'Amato, because——

The CHAIRMAN. That's not what I asked you. I don't mean to push because I think you have been—and I've said this—in terms of the notes you prepared and everything that you've done, you exemplify the highest standards and traditions of the Justice Department. I asked my counsel a question related to certain activities that took place in the Justice Department in the Bush Administration and I said I wondered whether or not they would have taken place—and I'll let him share that with you later—if you had been there in your old position. I don't think some of them would have happened because I don't think you would have permitted certain things to take place.

Having said that, I'm going to get back to the question. Given what you wanted to establish and do based on the facts that you've learned since and during, was this a credible investigation with respect to the handling of the documents in Mr. Foster's office?

Mr. HEYMANN. I don't think that this was a trustworthy and credible way to handle documents, but I don't want that to be taken, Senator D'Amato, as a suggestion that I distrust the people themselves involved.

The CHAIRMAN. I understand. We're talking about the investigation.

Mr. HEYMANN. In terms of the process, I do not believe the process was an acceptably trustworthy and reliable process, but I'm not suggesting that I have personal doubts about Mr. Nussbaum or any of the people involved.

The CHAIRMAN. You're not reflecting on the integrity of any of the individuals.

Mr. HEYMANN. The American people are entitled to a process they can trust; they're entitled to something more than my confidence in individuals.

The CHAIRMAN. I thank you for your candor. We'll return in about 10 to 15 minutes.

[Recess.]

The CHAIRMAN. Mr. Heymann, the reason we were somewhat delayed is because we had two votes instead of just one, but we think we're coming close to wrapping this up.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, and I thank you, Mr. Chairman, Senator Sarbanes, for coming back for this last questioner here.

Some of these will be fairly general questions, Mr. Heymann. When you're assigned from the Judiciary Committee and you're at the tail end of the questioning, most questions have already been asked by the time you speak. First, just a general observation. In my opinion, you have been an uncommonly fine public servant. As I listen to you testify, I regret that you are not continuing to serve in some public capacity, meaning no disrespect to Harvard University.

There is one point you made that should be underscored in your opening testimony, in case some historian somewhere reads all of this.

There is another stake that is considerably less obvious, but at least equally important. The credibility of Federal law enforcement as willing and able to pursue the truth wherever it may lead is, I believe, a great national asset. I have met or

worked with law enforcement officials from dozens of countries on five continents. I don't know another nation where the independence of law enforcement is so well established and so broadly accepted as it is here. But this must be preserved and carefully protected.

I think that is really important, and I would add I think the independence of the Attorney General is very basic to that. I recall when, years ago, I was in the State legislature and Bob Wallace, who then served on the staff of the President-elect, Jack Kennedy, called and said the President-elect was thinking about appointing his brother Bob Attorney General, what did I think, and I said I think it would be a mistake, that the Attorney General should not be too close to the President.

As it turned out, Robert Kennedy was a superior Attorney General, but the precedent is not good in the same way that Ed Meese serving for Ronald Reagan was not good. I think that, ideally, there should be some distance, and there should be no question about the independence of the Attorney General. I think Ed Levy, the former President of the University of Chicago who served as Attorney General under Gerald Ford, was almost the ideal kind of an appointment.

You mentioned that all White House staffs go through this problem, and I think my colleague Senator Carol Moseley-Braun's suggestion that there should be some procedure established is a good one. We ought to do it not in the heat of some controversy, but at some point soon, I think. If there are members of the Justice Department here, I think this is the appropriate time now to sit down and establish some procedures.

In terms of Bernie Nussbaum, is it a fair characterization to say that what he did was not illegal, not unethical, but unwise?

Mr. HEYMANN. I think that's basically a fair characterization, Senator Simon.

Senator SIMON. I wish that your suggestion had been followed. My guess is, Bernie Nussbaum today believes that your counsel should have been followed.

One other general question because you have mentioned the Independent Counsel. I assume you have known Bob Fiske; is that the case?

Mr. HEYMANN. I've known Bob Fiske since I was head of the Criminal Division and he was U.S. Attorney for the Southern District of New York in the late 1970's, Senator Simon.

Senator SIMON. In terms of his independence, integrity and ability, do you have any question at all?

Mr. HEYMANN. Absolutely none. I think he's as fine a lawyer as we have in the country. By that, I mean in character as well as in skills.

Senator SIMON. I have one final question, but it may lead into a few other questions. In your deposition of July 21, you were talking about not having White House Counsel present when you were talking to White House personnel. The question was:

Question: I take it you didn't forbid people to have their own attorneys present?

Your response was:

Answer: No, it was perfectly all right to have their own attorneys.

You then went on.

We have a situation here where people who work for the Federal Government get caught up in a situation and have to hire attorneys, personal attorneys, just as a matter of protection. Maggie Williams testified, and I assume she's a person of limited means, that she has a legal bill of $142,000. Do you have counsel here with you?

Mr. HEYMANN. I have Mr. Luskin, who's sitting right there, as counsel, and I have made a happy arrangement with him where I pay him nothing, Senator Simon.

Senator SIMON. I hope he is worth more than that.

[Laughter.]

Mr. HEYMANN. He's worth a great deal.

Senator SIMON. But you have probably reflected on this situation. I see people come in here who are Park Police. They are people of very limited means who, understandably, are frightened to be hauled in front of this kind of a panel, and they're warned you better be very careful; you may get in trouble; you better hire counsel. Is it proper for the Federal Government to be paying that counsel as long as there's no criminal charge in terms of their service? Have you reflected on this at all?

Mr. HEYMANN. As you know, Senator Simon, counsel for someone who is investigated by Independent Counsel and then exonerated is now paid by the Federal Government. If you're investigated—I'm trying to think of who recently has been investigated by the Independent Counsel Special Prosecutor—and exonerated, your counsel fees can be paid. I don't see any impropriety in it at all, and I do think you're describing what must be a real hardship on many people in many respects.

Senator SIMON. What you're talking about is when there is a specific investigation of a person, but the reality is we have had no investigation of Maggie Williams.

Mr. HEYMANN. That's right.

Senator SIMON. We've had no investigation of Phil Heymann. You have the good fortune of having friends who voluntarily serve as advisors to you. But if you had no experience in the Federal Government, and you're a law professor at Southern Illinois University Law School and all of a sudden, you're hauled up here, you would want to have counsel.

Mr. HEYMANN. I think you're raising a very serious question, Senator Simon. I would take very seriously the idea of providing some support for people in a well-defined category of cases. People do feel that they need attorneys now, even though they're just a witness with no suspicions about them at all, and it's very expensive.

Senator SIMON. I thank you very much. Again, I thank both the Chairman and Senator Sarbanes for coming back. I see the yellow light is on, but any of my last minute I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you.

Senator SARBANES. I just make this observation. If you were in the Government, your friend would not be able to provide you free counsel because it would contravene——

Mr. HEYMANN. Yes.

Senator SARBANES. —the restrictions, it would constitute a gift; they would not be able to accept that gift. So it works for you, but

that's not available to people who are in a Government position, which only compounds, I think, the point that Senator Simon was making.

Senator SIMON. That's a very important point that you make, Senator Sarbanes.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Heymann, I want to take you forward from the Thursday night that you had the call with Mr. Nussbaum. I believe you were in your kitchen, and you indicated to him that you were disturbed by the fact that he had gone ahead with the process without ever getting back to you. You also asked him, I take it, spontaneously, based on the actions of that day, are you hiding anything.

Is it fair to say at that point in time, Mr. Heymann, you found that Mr. Nussbaum's actions, in reversing the previous arrangement, at least called to your mind a question about whether there was something ulterior in the change?

Mr. HEYMANN. That's why I think I spontaneously asked the question.

Mr. CHERTOFF. Is it fair to say when you were summoned to the White House on the 27th, the following Tuesday, and informed by Mr. Nussbaum that a note had been found the day before, approximately 24 hours earlier, that crystallized in your mind a number of occurrences up to that point that gave you a sense of discomfort and led you to finally insist that the FBI get involved in an investigation about the note?

Mr. HEYMANN. Two or three. No more than that, Mr. Chertoff, but I hadn't liked the change in process of the previous Thursday, and I was dimly aware the Park Police didn't feel they were getting their full due. Also, the note should have been found 4 days earlier and it was a long time before we were told about it. All together, that meant we better find out for sure about that note.

Mr. CHERTOFF. That's the point at which you indicate that, regardless of what anybody else wants in terms of procedures, you are going to mandate that the FBI get involved in opening up an investigation at least as to the discovery of the note; correct?

Mr. HEYMANN. It was directed toward the discovery of the note.

Mr. CHERTOFF. At that point, I take it you had two thoughts in your mind. First of all, I take it you were troubled by the delay of over 24 hours between what appeared to be the July 26 discovery of the note in the briefcase by Mr. Neuwirth and the 24 hours that passed until you were notified. That was one issue?

Mr. HEYMANN. Yes.

Mr. CHERTOFF. But you were also concerned about the fact that 4 days earlier there had been at least some kind of a review process in Mr. Foster's office and that the note had not been discovered at that point?

Mr. HEYMANN. That was more on my mind than the other.

Mr. CHERTOFF. I take it it was on your mind because you understood from Mr. Margolis or Mr. Adams that, in fact, something had been removed from the briefcase and the briefcase had, in fact, been part of this review process?

Mr. HEYMANN. Yes. Immediately after being told of the note, I would have checked with Mr. Margolis and with Mr. Adams wheth-

er somebody looked in the briefcase, and they would have said yes, we remember Mr. Nussbaum looking in the briefcase and pulling out files.

Mr. CHERTOFF. I might tell you—I don't know how much you've been following the hearings, but we've had an accumulating mound of testimony, not only that Mr. Nussbaum looked into the briefcase on the 22nd—we've heard this from Agent Salter, the FBI, and the Park Police—but also—I think this was somewhat surprising. We heard from the Foster family lawyer that sometime after the law enforcement people left on the 22nd, Mr. Sloan himself opened the briefcase and said to Mr. Nussbaum there are scraps in the bottom of the briefcase.

Let me ask you, you were asked by Mr. Ben-Veniste whether you ultimately got the result of this investigation by the FBI into the discovery of the note, and I take it that was an investigation that was completed within a couple of weeks?

Mr. HEYMANN. I think it was completed August 8.

Mr. CHERTOFF. Casting in no way any fault on the FBI, but suggesting that we now know, for example, that Mr. Spafford overheard a conversation indicating that Mr. Nussbaum was aware of the paper on the 22nd rather than on the 26th, let me ask you whether that fact was available to you, or was it, to your knowledge, part of the FBI investigation as of August?

Mr. HEYMANN. The FBI, for reasons that I don't know, did not interview Mr. Spafford, and, therefore, it was not part of their investigation in any way.

Mr. CHERTOFF. You would agree with me that that is a very important piece of evidence in exploring the circumstances under which the note was found?

Mr. HEYMANN. Mr. Chertoff, it seems to me to be an important piece of evidence, but one that tends to reassure that, indeed, the note was in the bottom of the briefcase and hadn't been secreted, hadn't been invented or anything else.

Mr. CHERTOFF. Would it raise the question in your mind, though, as to whether the note had, in fact, been discovered 4 days earlier than Mr. Nussbaum told you and the Attorney General on the 27th?

Mr. HEYMANN. It doesn't seem to me that there would be any particular reason to purposely leave torn-up yellow pieces of paper that might be a note in the bottom of a briefcase, Mr. Chertoff. Maybe my imagination is failing me, but it doesn't strike me as suspicious.

Mr. CHERTOFF. Would you want to know whether people had, in fact, assembled the note on the 22nd rather than the 26th?

Mr. HEYMANN. Yes, I would be interested in that.

Mr. CHERTOFF. Were you aware of Mr. Spafford's testimony that Mr. Nussbaum's attention was specifically called to the briefcase, and were you aware of the fact that Mr. Spafford testified or had knowledge that Mr. Sloan had specifically raised an issue about it, would it at least have caused you to want to probe further into whether the note was actually looked at several days earlier?

Mr. HEYMANN. Certainly the FBI would have asked those questions and would have asked why it wasn't looked at. Certainly they

would have asked those questions. There might very well be an explanation which was it wasn't taken very seriously or something.

Mr. CHERTOFF. That it wasn't taken seriously at the time?

Mr. HEYMANN. At the time.

Mr. CHERTOFF. Let me ask you also whether you had available to you, as of the second week of August when the investigation concluded, evidence that after the 26th, when the note was stated to have been discovered in the briefcase, Mr. Nussbaum had called in a secretary who had some knowledge about what was in the briefcase and interrogated her intensively about what she had seen, whether there were more papers in the briefcase? Would that have been a fact that you were aware of as of the second week of August?

Mr. HEYMANN. I was not aware of that, no.

Mr. CHERTOFF. Is that a fact that you think would have been useful in carrying out this investigation by the FBI?

Mr. HEYMANN. It would have been asked about. The FBI would have asked about it.

Mr. CHERTOFF. Were you aware that when Mr. Sloan was interviewed by Agent Salter of the FBI, who was one of the agents carrying out the investigation, and asked about the search of the 22nd, that Mr. Sloan did not indicate to Agent Salter anything about having seen scraps of paper on the 22nd?

Mr. HEYMANN. I'm aware of that from having recently reread the FBI report.

Mr. CHERTOFF. You know when you saw Mr. Nussbaum on the 27th, he didn't say to you, in words or in substance, Phil, I feel a little foolish, I think we might have seen scraps of paper in the briefcase on the 22nd and failed to pursue it? He didn't indicate that to you?

Mr. HEYMANN. No.

Mr. CHERTOFF. There was nothing you were told or the Attorney General was told in your presence by Mr. Nussbaum on the 27th that indicated that perhaps the paper had been seen earlier and it had been merely a question of dropping the ball?

Mr. HEYMANN. No.

Mr. CHERTOFF. Let me now direct your attention to this week after the 27th, when you were finally informed about the note. This was after you ordered an investigation by the FBI; right?

Mr. HEYMANN. Yes.

Mr. CHERTOFF. The predication or the jurisdictional hook for the investigation was obstruction of justice; correct?

Mr. HEYMANN. Correct.

Mr. CHERTOFF. Did a woman named Nancy McFadden come in later that week and have a conversation with you at the Department of Justice?

Mr. HEYMANN. Yes.

Mr. CHERTOFF. Who was Nancy McFadden?

Mr. HEYMANN. Nancy McFadden was, I think, the Deputy Associate Attorney General; that is, one of the senior assistants to Mr. Hubbell, who was Associate Attorney General.

Mr. CHERTOFF. Was she a career prosecutor?

Mr. HEYMANN. No, she was not.

Mr. CHERTOFF. What was your understanding of how she came to be occupying a position in Mr. Hubbell's office?

Mr. HEYMANN. She was one of the people who had come in from the campaign, of which there are always many, Mr. Chertoff.

Mr. CHERTOFF. Did you and Mr. Margolis have a view of who she was representing at the Department of Justice?

Mr. HEYMANN. I think that Mr. Margolis—I shouldn't speak for him, but I think he had a feeling that she was very closely tied to the people in the White House. I had not myself ever thought about it. I had never thought about her other than as a very talented assistant to Webb Hubbell.

Mr. CHERTOFF. Now, she came in, and what did Ms. McFadden tell you?

Mr. HEYMANN. She came in and said the FBI, who I had told to conduct a very aggressive investigation, was, in a sense, frightening each of the White House staff in turn by telling them that they were being investigated for obstruction of justice, and that there was a lot of concern about that.

Mr. CHERTOFF. What did she want?

Mr. HEYMANN. I don't know what she wanted. I think it was the first time that I focused on the fact that my direction had opened an obstruction of justice investigation. I marched Nancy into David Margolis' office and I said, "David, do we have to be telling these people that they're being investigated for obstruction of justice?" I simply wanted to know what had happened to that note. He said——

The CHAIRMAN. Now, wait a minute. You wanted to know what had happened to that note. You mean you were concerned about why it was not discovered sooner and why it was not turned over sooner—and that's why you wanted to know what had happened to that note?

Mr. HEYMANN. Yes, those were the questions that I wanted pursued, Senator D'Amato.

The CHAIRMAN. All right. This is the first time I'm hearing this. Please continue.

Mr. CHERTOFF. You were telling us about bringing Nancy McFadden into Mr. Margolis' office. Would you continue, please?

Mr. HEYMANN. I asked Mr. Margolis, do the agents have to be telling each of the White House people that they're getting investigated for obstruction of justice? I could imagine that that would be pretty frightening to me and to anyone else. Mr. Margolis said he didn't want to answer then, he had to go out, and he left the room. I don't know, but I suppose Nancy McFadden went back to her office.

I caught up with Mr. Margolis shortly afterwards. I don't remember whether it was half an hour or 5 minutes later. He said, in effect, Phil, you shouldn't have asked me about how we're going to conduct an investigation in the White House in front of Nancy McFadden because we should decide that without the White House people being in on our decision.

Mr. CHERTOFF. I thought Nancy McFadden was an employee of the Department of Justice.

Mr. HEYMANN. I think Nancy McFadden was. Mr. Margolis was—and I understand that, too—concerned by the fact that she was very closely tied through the campaign with people in the White House. I thought Mr. Margolis was right, that I had put him in an embarrassing position.

Just to finish what happened, he said I'll check with the FBI to see whether they think they're getting much more useful information by telling people that they're being investigated for obstruction of justice. He called up Larry Potts, asked him is this a useful technique or are people just doing that because it's the label on the piece of paper? He tells me that Mr. Potts said to him it's not a useful technique. We can continue to investigate under the label obstruction of justice, he said, without calling everybody in one at a time and saying you're being investigated for obstruction of justice, and we will do that, and I thought that was a fair and sensible resolution.

Mr. CHERTOFF. Let me just hone in on this for a moment before I finish, if I may, Mr. Chairman. Am I correct in your understanding, when Ms. McFadden came in and indicated to you that people in the White House were very concerned about the fact that the FBI agents were telling them this was an obstruction of justice investigation, was it your understanding she wanted you to do something about it?

Mr. HEYMANN. Yes, but what? Everybody comes to the Deputy Attorney General and wants him to do something about everything, Mr. Chertoff, and she didn't say call off the investigation. She simply came in and said people are very upset over there because they're being told they're being investigated for obstruction of justice. I was, to be frank, aware of the fact that I had asked the FBI to behave like an 800-pound gorilla. I thought I might have some responsibility for now reducing the weight of the 800-pound gorilla.

Mr. CHERTOFF. She plainly wanted you to do something about it, though; you'll agree with that?

Mr. HEYMANN. If I could do something about it, if I could responsibly do something about it.

Mr. CHERTOFF. It was later Mr. Margolis who, in his gentle and indirect way, indicated to you that he thought Ms. McFadden was really a White House representative for purposes of whether you ought to be having a discussion about this?

Mr. HEYMANN. That's correct.

Mr. CHERTOFF. I have one more question on this. I assume in your experience, as in mine, there are often many, many times private attorneys complain to prosecutors that they think the FBI is being a little too aggressive or frightening witnesses by using terms like obstruction of justice, and I guess you would agree with me those lawyers would love to have the opportunity to come to the Deputy Attorney General and make that kind of case. How often does that opportunity present itself to private attorneys?

Mr. HEYMANN. Not very often.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you very much, Mr. Chairman, Senator Sarbanes.

Mr. Heymann, was any of your initiation of this 800-pound gorilla, as you've called it, reaction related to your sense of having been rebuffed or rejected in your overture to Mr. Nussbaum?

Mr. HEYMANN. No, Senator Kerry. I don't think it was at all. I thought that we had a major question of credibility on our hands. The White House had insisted on conducting a search by itself where it had overlooked a note that was right there in the bottom of a briefcase, and that worried me a lot, and that's why I had no choice. I mean, I wasn't angry or anything. I just thought boy, we better get to the bottom of this right away.

Senator KERRY. When did that reaction first hit you?

Mr. HEYMANN. I can't remember whether it's the night of the 27th, but it's by very early in the morning of the 28th, I think, that I've made contact with the FBI.

Senator KERRY. It was in direct reaction to the notification about the note itself?

Mr. HEYMANN. Yes.

Senator KERRY. The fact that the note had been found but held onto for a period of time and found late disturbed you?

Mr. HEYMANN. Not nearly as much as the fact that the note was only found 4 or 5 days after a search.

Senator KERRY. Going back to the initial conversation, I listened to your opening statement in my office, and some of the goings-on, but I want to try to understand: You're unclear in your deposition as to how you initiated the first contact with the White House or they with you; is that correct?

Mr. HEYMANN. That is correct.

Senator KERRY. You're still unclear at this point in time?

Mr. HEYMANN. I'm still unclear—let me get the right day.

Senator KERRY. The 21st, I think, was your first——

Mr. HEYMANN. By the end of the 21st, I know that we have an understanding as to how the search of Mr. Foster's office will be done.

Senator KERRY. How many conversations did it take to reach that understanding?

Mr. HEYMANN. That's what I can't remember. I can't remember how many of them are conversations between me, Margolis and Adams which are then carried over to conversations between them, Mr. Nussbaum and others, and how many of them are direct conversations between me and Mr. Nussbaum. I know that I must have talked to somebody in the White House to make arrangements that Adams and Margolis were going to go over and represent us and to explain why they were going.

Senator KERRY. Do you have a specific recollection as to at least one conversation with Mr. Nussbaum?

Mr. HEYMANN. I think that I talked to Mr. Nussbaum that day about it, but I wouldn't bet $500 on it.

Senator KERRY. On what do you base the notion, then, that you had an agreement or an understanding?

Mr. HEYMANN. Besides the fact that I believe that Mr. Nussbaum and I had that conversation and agreed, both Margolis and Adams

returned that evening from having met with the White House people. They described the same agreement as having been reached. They described Mr. Neuwirth as saying, "No, we shouldn't be going this far"—they described it to me that evening—and Mr. Nussbaum saying, "We've already agreed, I've already agreed to go that far." So there's no mistaking the fact that by 6:00 on the 21st, everybody's been contacted and everybody understands that's the way it's going to be done.

Senator KERRY. Your precise understanding as to how it would be done then was the review by the attorneys with a separation of files?

Mr. HEYMANN. Mr. Nussbaum and the career attorneys looking at enough of each document to determine whether it might be relevant to the investigation. For example, if it said "Supreme Court Nominees," they would not look any further. The title "Supreme Court Nominees" would be enough. If it looked like it might be relevant to the investigation, it would either be handed directly to the investigators for their use or put in a pile for the investigators. Or Mr. Nussbaum saying this is relevant, but I think it's protected under executive privilege, in which case we would have a separate pile that we would have to work out, and presumably the Legal Counsel's Office would play a role in that.

Senator KERRY. In your conversations with the White House or with Mr. Nussbaum, do you have a recollection whether or not you specifically raised questions or there was discussion about executive privilege?

Mr. HEYMANN. I'm sure that that was on the table all the time. I mean, it was a term that was used regularly.

Senator KERRY. I'm asking you if you have a recollection of that specifically being part of the discussions. Did you raise it yourself?

Mr. HEYMANN. If you're asking for a specific memory of a specific conversation, Senator Kerry, I don't think I have one, but that's why Margolis and Adams were being sent over, because of the difficulties of dealing with executive privilege in an investigation, and that's, of course, what Mr. Neuwirth was objecting to late on the 21st. He was saying no, you're invading executive privilege too much, and Mr. Nussbaum said I've already agreed to this.

Senator KERRY. Did you convey to Mr. Nussbaum or to the White House your concern right up front about the potential downside of any reservation or openness on their part?

Mr. HEYMANN. The following morning is the first time I knew there was going to be any problem. I thought we were dealing very smoothly with an issue that is difficult for every Administration. The following morning when I was called and told that Mr. Nussbaum had directed that our attorneys and the investigators not see any document, I was very loud, very angry about the fact that this was a terrible mistake, and I told Mr. Nussbaum that I would want to think very seriously about pulling the Justice Department attorneys out of it, bringing them back.

Senator KERRY. What did he say to you when you said that?

Mr. HEYMANN. He was taken aback, and he said Phil, I have to think about this, and I have to talk to some people.

Senator KERRY. Did he say who he had to talk to?

Mr. HEYMANN. He did not.

Senator KERRY. Did you learn at any time who he did talk to?

Mr. HEYMANN. I never learned who, and I didn't ask him on that occasion.

Senator KERRY. You have used in your deposition various words to describe what you've now most recently called an understanding. You've said sometimes an agreement, but you've taken pains to say it wasn't a contract, or it wasn't something binding. Nevertheless, it's fair to say, isn't it, you had a full expectation, whatever you want to call it, you had a procedure in place?

Mr. HEYMANN. This is a very clean way of saying this, Senator Kerry. The reason I thought there would be no change in that procedure is because I thought it was so sensible, and we had all seen how sensible it was. It wasn't that it would be a betrayal of trust to change it, a betrayal of my trust. It was that it was so sensible and we all saw that the night before.

Senator KERRY. But you were prompted at one point in reaction to that to ask, were you not, whether or not something was being hidden?

Mr. HEYMANN. No. I was prompted to ask whether something was being hidden by the fact that, after assuring me that he would not change the procedure without contacting me after he had talked to whoever he was going to talk to, Mr. Nussbaum went ahead and changed the procedure in a way that I thought weakened it immensely, changed it to a far inferior procedure. He didn't contact me, and he kept the Department of Justice representatives and the investigators there when they had no meaningful role to play. All of that having happened, I was moved to ask him why are you doing this, is there some terrible secret there, and he said no.

Senator KERRY. Did he say anything more about why?

Mr. HEYMANN. I don't honestly remember. There wasn't an explanation in terms of I think this is a better procedure. I don't remember very clearly, Senator Kerry, but I think it was something like Phil, I felt we had to do it, or this is the way we have to do it.

Senator KERRY. Is it fair to say—this may be obvious, but I'd like to hear it for the record—that the very things that you feared have all come true?

Mr. HEYMANN. Yes.

Senator KERRY. Is it your judgment today, based on your experience in handling these matters and based on the events that took place, that the handling of the documents or the investigation into that office was compromised?

Mr. HEYMANN. Senator Kerry, I don't think it was done in a way that would let people know that non-White House people, career Justice Department people had seen every document. In that sense, it was not a sufficiently trustworthy procedure. However, I have no reason to believe that there were documents there that would have born greatly on Vince Foster's death other than the note and perhaps one or two other things. I don't know.

Senator KERRY. So, in essence, it's your judgment that it was less than it should have been in form but not in substance?

Mr. HEYMANN. I don't know the substance. I can't know the substance because I don't know what was there, but it seems to be en-

tirely conceivable that they managed to throw substantial suspicion over no wrongdoing.

Senator KERRY. I suppose that the judgment can't really be made about substance based on what happened with respect to the form?

Mr. HEYMANN. You have to wonder, in any such situation, whether it's just clumsiness and paranoia or whether there's some other reason. My own experience, which now goes back to 1955, is never underrate clumsiness and paranoia.

Senator KERRY. Thank you very much, Mr. Heymann.

The CHAIRMAN. Senator Sarbanes, we have no other questions.

Mr. BEN-VENISTE. Very briefly, Professor Heymann, recognizing the rubric under which you have now stated your optimism and confidence in clumsiness in Washington and going back to some questions that were asked a few moments ago, when you learned that Mr. Spafford had testified that torn-up pieces of paper or yellow pieces of paper were found on the 22nd or observed on the 22nd in the bottom of Mr. Foster's briefcase, if I understand your testimony, this was a corroborating factor that gives you, as you sit here today, greater confidence that there was no alteration of or tampering with Mr. Foster's note?

Mr. HEYMANN. That was my testimony. I guess Mr. Chertoff, being the fine lawyer that he is, pointed out that you could also want more investigation on the basis of it. My initial personal reaction was that it was relatively reassuring that it was there.

Mr. BEN-VENISTE. On the big picture question?

Mr. HEYMANN. My own personal reaction was to find it reassuring to know that scraps of paper were there on the 22nd.

Mr. BEN-VENISTE. Let me add to the equation additional information that this Committee has developed from the combined testimony of Ms. Gorham and Ms. Tripp, two people who worked for Mr. Nussbaum and Mr. Foster as of the time of Mr. Foster's death. Their testimony was that there were scraps of paper observed on the 22nd which were in the bottom of Mr. Foster's briefcase. The question in response to Ms. Tripp's question was, have they looked through the briefcase, and Ms. Gorham replied yes, there's nothing in there, just some yellow stickies. Learning this additional information, is this another reassuring corroboration, in your view, that the note was not tampered with in its form?

Mr. HEYMANN. If you'll promise that I won't be subjected to Mr. Chertoff's re——

The CHAIRMAN. I can't promise that because you're going to be subjected to mine. I'm going to let you pursue it, but, Philip, I will raise some questions.

Mr. BEN-VENISTE. I think that's why we're here, so that everybody can raise the appropriate questions.

The CHAIRMAN. He just said if you promise me that I'm not going to—I'd like to know how you can make that kind of assumption?

Mr. BEN-VENISTE. I would never dare make such a promise nor such an assumption.

The CHAIRMAN. Richard, please continue.

Mr. BEN-VENISTE. I know you too well.

The CHAIRMAN. Please continue.

Mr. HEYMANN. The only reason I'm at all hesitant, Mr. Ben-Veniste, is obviously because the facts that you've described and

Mr. Chertoff has described could be part of several different stories that I can imagine. My offhand reaction right off the bat is to say yes, I can imagine someone confusing the scraps of paper that I saw on the table with yellow stickies. By that, I take it she means the M&M note pages. I could imagine someone confusing them with that. So it does lead me to think that it's entirely conceivable that the reason they were not pulled out—even though we now know it was called to the attention of Mr. Nussbaum—is because he thought there was nothing of importance there.

Mr. BEN-VENISTE. We are awaiting Mr. Nussbaum's testimony and the testimony of others, but on the record that we have now, I want to thank you for taking the time and feeding these additional pieces of information that we've developed into the total equation and giving us your candid and indeed spontaneous reaction to that information. But there was one piece of information, and I use that word in quotes, that was supplied in one of the questions asked to you, and that was the notion that someone had reassembled the note on the 22nd, for which there is absolutely no testimony in this record.

Clearly, if there were any such evidence, that would greatly affect the question of the appropriateness of what people did and said at the time. But I will emphasize to you that there is no such evidence that that note was reassembled on the 22nd, and if anyone has such evidence, they ought to come forward with it on such an important question and not put it in a hypothetical question.

Mr. HEYMANN. Mr. Chairman or Mr. Ben-Veniste, if I may add one word.

Mr. BEN-VENISTE. Certainly.

Mr. HEYMANN. My main reaction to all this is that if the Department of Justice people had been permitted to take part in the search in a meaningful way on the 22nd, we wouldn't be speculating about it at all.

Mr. BEN-VENISTE. I think we can all agree on that.

Mr. CHERTOFF. I think that is the critical point.

Mr. BEN-VENISTE. I have one further question——

Mr. CHERTOFF. I'm sorry.

Mr. BEN-VENISTE. I have one further question to finalize this. With respect to the business about Nancy McFadden coming to your office and saying oh, my goodness, the FBI is at the White House and they're telling everyone that they are being questioned about an obstruction of justice investigation, did you think that was an inappropriate thing to bring to your attention?

Mr. HEYMANN. No, I didn't. I'm glad you ask it again, Mr. Ben-Veniste. She wasn't coming as an ambassador from the White House. She was coming as someone who knew all those people much better than I did. They would not have felt remotely free—and I wouldn't want them to feel free—to call me up and say we feel like we're being badgered or abused or frightened or something. They would tell her, and if they told her, I hope she would tell me.

Mr. BEN-VENISTE. The information that she imparted to you was, in fact, new and, in a sense, useful information for you to have?

Mr. HEYMANN. It left me feeling entirely free to do whatever I thought was right, and we checked with the investigators and they

said no, we don't think it's a crucial way to get information for us to be throwing around the term "obstruction of justice," so we'll stop it.

Mr. BEN-VENISTE. In fairness to Ms. McFadden, who is not here as a witness, was there any suggestion in your view that Ms. McFadden was trying to exert undue pressure or any pressure at all on you in bringing this to your attention?

Mr. HEYMANN. Our relationship was such that she wouldn't feel that she could exert pressure on me, and she wasn't trying.

Mr. BEN-VENISTE. Did you have the sensation that anyone was trying to exert pressure?

Mr. HEYMANN. No.

Mr. BEN-VENISTE. I have nothing further. Thank you, Mr. Chairman.

Mr. CHERTOFF. I have some questions just on a couple of these last points, Mr. Heymann. Recognizing that Nancy McFadden, who is a woman of considerably less experience and rank in the Department than you, couldn't exert pressure, you will agree with me that she made it plain when she came in that she was expressing a concern on the part of people at the White House about the way the FBI was conducting the investigation; correct?

Mr. HEYMANN. Yes, that people were complaining to her. I have no idea to this day whether one person called her up or three people called her up or what the nature of the conversation was, but that's correct.

Mr. CHERTOFF. You understood she plainly wanted you to do something about it?

Mr. HEYMANN. If it was appropriate, yes, she wanted me to do something about it. I don't want any suggestion that she was asking me to do something improper.

Mr. CHERTOFF. You certainly wouldn't have done anything improper?

Mr. HEYMANN. No, I would not have.

Mr. CHERTOFF. No one here has a doubt. In fact, it was Mr. Margolis who, again, in his respectful way, indicated to you after the fact that he didn't think it was proper to have a conversation about this with Ms. McFadden because she was really the White House representative?

Mr. HEYMANN. It's not a question of proper, Mr. Chertoff. I think that I had put him in the position of telling me whether we should pull back on the 800-pound gorilla or not in front of her, and I shouldn't have put him in that position. He was afraid that that was like asking him to respond in front of whoever her close and long-time friends in the White House were.

Mr. CHERTOFF. I want to finally turn back to the issues that Mr. Ben-Veniste raised concerning, I guess, our ruminating with you at this point and getting the benefit of your views on the state of the record because one thing is perfectly clear. As of the time you left being Deputy Attorney General, you did not have the information about the Spafford evidence. You did not have the information about Bernie Nussbaum grilling Deborah Gorham. You didn't have a whole host of information we now have; correct?

Mr. HEYMANN. That's correct.

Mr. CHERTOFF. Again, I understand you don't even have the benefit of having sat here with all of us, but let me ask you this in terms of matters that would have caused a reasonable investigator to want to look further. You have a situation here in which you and the Attorney General of the United States have been specifically told on July 27 that, on the day before, through an accident, a freak accident or happenstance, torn-up pieces of paper were found in a briefcase and were withheld from you for about 30 hours; correct?

Mr. HEYMANN. Correct.

Mr. CHERTOFF. You also have, as of this time, your own thoughts that this note should have been discovered 4 days earlier during the search because, in fact, Mr. Nussbaum looked in the briefcase and people told you about that; right?

Mr. HEYMANN. I may have only asked about whether he looked in the briefcase after that, but yes, I thought it should have been found 4 days earlier.

Mr. CHERTOFF. So you have that piece of information. You also have the piece of information now that Mr. Spafford indicates that even after this review of the briefcase in the presence of law enforcement, once again they go into the briefcase. Mr. Sloan opens it up and he says Bernie, there's scraps or scraps of paper in the bottom of the briefcase. That's yet additional information; correct?

Mr. HEYMANN. Yes.

Mr. CHERTOFF. Of course, you will agree that, although not the exclusive concern of the investigators, obviously a very burning interest on the part of everybody is let's see if there's a torn-up note or suicide note or something that would reflect evidence of state of mind; right?

Mr. HEYMANN. Yes.

Mr. CHERTOFF. Now, even with what you knew on the 27th, it's very hard to understand how Mr. Nussbaum, Mr. Sloan and Mr. Neuwirth, who have been described—at least Mr. Nussbaum has—as a very aggressive New York litigator, certainly a thorough guy and a very careful guy, would have looked in the briefcase and wouldn't have discovered it.

Now you have, in addition to that, evidence that his attention was specifically directed to the paper in the briefcase. We also now know from Ms. Gorham that on the 26th, after this accidental discovery by Mr. Neuwirth occurs, she's brought in and she's interrogated. I think at one point her testimony was it's almost as if Mr. Nussbaum was trying to break her down about what she had seen in the briefcase the week before. Had she seen more than one piece of paper? Had she seen two pieces of paper? Had she seen more than just torn-up paper?

These are additional facts that come forward. Don't these call to question in your mind the need to further investigate whether it is frankly credible that on the 22nd they really missed the note?

Mr. HEYMANN. Mr. Chertoff, on the whole, let me start by saying I don't think it's a particularly good idea for me to try to assess evidence that I have not been watching closely——

Mr. CHERTOFF. If you don't feel comfortable, I won't force it.

Mr. HEYMANN. I would rather not.

The CHAIRMAN. You're absolutely right. I think it puts a great burden on you because regardless of what you say, reasonable people can have differences. I might, then, speculate: Was all of the note, for example, turned in? Did that constitute the 28 pieces that we now know existed? We thought it was 27, but we were told—at least I was told—or learned for the first time that it was actually 28 pieces. Was it 28, or might there have been another sheet that was missing? I mean, these are all the kinds of things that we have to look into and evaluate as it relates to all of that testimony, and I think it places an unfair or unreasonable burden to ask you to conjecture one way or the other.

I have to tell you, as far as I'm concerned, you exemplify the finest and the best in the traditions of our Justice system and our Justice Department, Mr. Heymann. Your testimony today is a further example of that, your stewardship over the years is an example of that, and I think I express the appreciation of the entire Committee for your cooperation and for the manner in which you continue to carry yourself.

Mr. HEYMANN. Thank you, Senator.

Senator SARBANES. Mr. Chairman, I would just like to make the observation that I think Mr. Heymann is very wise in this last response, since the questions that were put to him assume a certain point of view.

We, in fact, have had very conflicting testimony about Mr. Nussbaum looking or not looking, as the case may be, or what the nature of that looking was, into the briefcase. We've had Members of the Committee wave a briefcase around and say look, you see these yellow pieces of paper in this briefcase, how could you not see them? The testimony is very clear that briefcase was never waved around or opened up in that office in the way it was waved around and opened up in this Committee to demonstrate that it would have been seen.

In fact, we have conflicting testimony on the nature of how Nussbaum was looking into the briefcase and so forth. I frankly can't conceive of how the delay would have obstructed—in the end, it didn't obstruct the inquiry. In the end, it was all laid out there, so I don't think the inquiry was obstructed. Do you see the inquiry as having been obstructed?

Mr. HEYMANN. When we got the note 4 days later, we had the note, and it became part of the inquiry that went on then for some period afterwards, Senator Sarbanes. You're right about that.

Senator SARBANES. OK. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank you again. We stand in recess until 9:30 tomorrow.

Mr. HEYMANN. Thank you very much.

The CHAIRMAN. Thank you, Mr. Heymann.

[Whereupon, at 2 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Thursday, August 3, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

RESPONSES TO TAKEN QUESTIONS
THURSDAY, JULY 21 1993

-- Vince Foster's office was unsealed this afternoon in the presence of officials from the U.S. Park Service Police, the Justice Department, the FBI, and the U.S. Secret Service. White House Counsel Bernie Nussbaum and a lawyer representing the Foster family were also present.

Nussbaum then conducted a thorough search of Foster's office. No suicide note nor any other document bearing on his death were discovered.

Vince Foster's body -- accompanied by Associate Attorney General Webb Hubbel -- was flown to Little Rock, AR on board a Department of Defense aircraft today. His family flew to Little Rock on a private aircraft.

-- Any questions relating to the Justice Department review of the White House Travel Office are referred to the Department of Public Affairs at DOJ.

Z 000447

A4 FRIDAY, JULY 23, 1993

Clinton Finds No Explanation To Aide's Death

Probes Continuing On Apparent Suicide

By Ann Devroy
Washington Post Staff Writer

President Clinton yesterday minimized the likelihood that an explanation will be found for the apparent suicide of White House deputy counsel Vincent Foster Jr., but investigators for the U.S. Park Police and Justice Department said their investigations of Foster's death are continuing.

As many of the Arkansans who came to Washington to run the new government began returning home for the funeral of their friend, Clinton and his senior aides repeated that no clues now exist to explain Foster's death. He was found shot in the head Tuesday night in a secluded area of a Virginia park overlooking the Potomac River.

U.S. Park Police Chief Robert Langston, whose officers are conducting the inquiry into the death, said all evidence "is leading in the direction" of confirming the original finding that the 48-year-old lawyer took his own life.

Washington Post

Foster's office was searched yesterday in the presence of officials from the National Park Service, the Justice Department, the FBI and the Secret Service, according to the White House.

Under their supervision and in the presence of a Foster family lawyer, White House counsel Bernard Nussbaum examined the office and found "no suicide note nor any other document bearing on ... the death," a White House statement said.

The Justice Department said yesterday it has discovered nothing "to indicate foul play or murder" in the death. Nevertheless, the department's inquiry will continue "to find out what the factors were—if it was a suicide—that led to him killing himself," said department spokesman Dean St. Dennis.

The department's intentions seemed more extensive than what had been announced Wednesday, but St. Dennis described the probe as "simply a part of good police work" when a high-level government official dies "under less than known circumstances."

-- "It appears that Mr. Foster's death was a suicide," St. Dennis said. But, he added, "even though there may be only one in a 1,000 chance of foul play, everything will be done to keep in sharp focus even the remote chance that he may have been murdered."

Langston said the police have examined Foster's telephone logs, paperwork in his office, computer files and interviewed "a number of people" who talked to Foster on Tuesday. Foster had arrived as usual at the White House, had lunch at his desk and left the White House shortly after 1 p.m. Police are attempting to reconstruct the five-hour gap between Foster's departure and the call to authorities shortly after 6 p.m. by the person who found Foster's body.

"We have quite a bit of information left to gather," Langston said. Police, for example, are tracing the license plates of cars that were parked in the overlook lot. Detailed interviews with the family will not occur until after today's funeral, when at least one mystery is expected to be cleared up: whether Foster used his own gun to kill himself.

Langston said one old gun was found at the scene, but it was constructed of parts of at least two guns with separate serial numbers. The chief said Foster owned a gun described as being like the one found.

Foster's body was flown to Little Rock, Ark., yesterday aboard a Defense Department aircraft, accompanied by Associate Attorney General Webster L. Hubbell. Foster, Hubbell and Hillary Rodham Clinton were partners in the influential Rose law firm in Little Rock, and the three were described by the president as "best friends."

The Foster family and other Arkansans flew separately on a private plane to Little Rock where a funeral mass will be held this morning at St. Andrew's Cathedral. The Clintons were to attend the service with their daughter, Chelsea, and the president was to deliver a eulogy for his childhood friend.

Like the president, many of Foster's colleagues and friends continued to question how a lawyer at the top of his career and with no visible serious problems could have taken his life. While many of Foster's associates described him as being "down" and "depressed" and too prone to blame himself for White House problems, they all said he had given no hint of a depression so serious as to take his own life.

"I don't think there is anything more to know," Clinton said. "I mean, you know, his family, his friends, his co-workers—we've been up real late two nights in a row now, remembering and crying and laughing and talking about him, and I don't think there is anything else."

Staff writer Michael Isikoff contributed to this report.

7-1 (Rev. 2-21-91)

FBI LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

1 - Mathis
1 - Deedrick

To: SAC, WMFO

Date: August 2, 1993

FBI File No. 72-WF-187908

Lab No. 30730011 D/S UD UJ

Reference: Communication dated July 30, 1993

Your No. 72-WF-187908

Re: UNSUB;
POSSIBLE OBSTRUCTION OF JUSTICE OF
U.S. PARK POLICE INVESTIGATION OF DEATH OF
VINCENT FOSTER, COUNSEL TO THE PRESIDENT,
DOJ;
OO: WMFO

P Specimens received: Hand delivered by SA [redacted] July 30, 1993

Specimens:

Q1 Twenty-seven pieces of torn paper bearing original handwriting

Also Submitted:

United States Capitol Police Laboratory Report dated 7-29-93

Results of examination:

The pieces of paper designated Q1 were reassembled, photographed, and examined for indentations. No indented writing was observed on the questioned document.

Enclosure

JHM:mnm

52

MAIL ROOM ☐ This Report Is Furnished For Official Use Only

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Recorded 8/2/93 — Laboratory Work Done: JAJ — Received 7/30/93

To: SAC, WMFO

FBI File No. 72-WF-187908-4

Lab No. 30730011 D/S UD

Reference: LETTER dated July 30, 1993 & TELEPHONE CALL 7/30/93

LFPS WILL PROCESS AND RETURN THE SUBMITTED EVIDENCE

Your No. 72-WF-187908 — LCN L-5024 — Examiner: SUPP — Noted by: KL

Re: UNSUB;
POSSIBLE OBSTRUCTION OF JUSTICE OF
U.S. PARK POLICE INVESTIGATION OF DEATH OF
VINCENT FOSTER, COUNSEL TO THE PRESIDENT,
OOJ
OO: WMFO

Specimens received: Hand delivered by SA [redacted] July 30, 1993

Specimens:

Q1 Twenty-eight pieces of torn paper bearing original handwriting

Also Submitted:

United States Capitol Police Laboratory Report dated 7-29-93

7-30-93

BEST COPY

Laser exam - no hits
Processed DFO -
Q1 to Photo

Processed N.H. - no hits

FBI-00000080

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

YOUR FILE NO
FBI FILE NO 72-WF-187908
LATENT CASE NO. L-5024

8/2/93

TO SAC, WMFO

RE UNSUB;
POSSIBLE OBSTRUCTION OF JUSTICE OF
U.S. PARK POLICE INVESTIGATION OF DEATH OF
VINCENT FOSTER, COUNSEL TO THE PRESIDENT;
OOJ

REFERENCE Specimens received 7/30/93 and telephone call 7/30/93
EXAMINATION REQUESTED BY WMFO
SPECIMENS Q1, twenty-eight pieces of torn paper bearing
original handwriting

This report confirms and supplements information furnished telephonically on 7/30/93.

The result(s) of the other requested forensic examination(s) and the disposition of the specimen(s) will be furnished in a separate report.

The specimens were examined and one latent palm print of value was developed on one piece of paper, part of Q1.

No palm prints are available in the main fingerprint files for STEPHEN R. NEUWIRTH, FBI #876995RA5; BERNARD WILLIAM NUSSBAUM, FBI #766788RA5; CLIFFORD SLOAN, FBI #484313TA0; CHARLES WILLIAM BURTON or VINCENT FOSTER.

The specimens are enclosed.

Enc. (28)

THIS REPORT IS FURNISHED FOR OFFICIAL USE ONLY

FBI-00000067

Named suspects

STEPHEN R. NEUWIRTH, FIB# 876 995 RA5

BERNARD WILLIAM NUSSBAUM, FBI# 766 788 RA5

CHARLES WILLIAM BURTON

VINCENT FOSTER

CLIFFORD SLOAN, FBI# 484 313 TA9

Examination Completed 7:50 P (Time) 7-30-93 (Date) Dictated _____ (Date)

(L) Typed Diary Notes of Monaco (tab 22)

REDACTED - NONRESPONSIVE

Vince Foster's Death.

[redacted] This morning the Depratment of Commerce person Collier came in and said that he wanted to pull the Park Police out of it. Phil had a meeting. Phil spoke with me, David, and Roger and in the presence of David, Roger and me called over to the White House in the morning and told them he wanted a "vigorours investigation" and that the Park Police would do it with the FBI.

[redacted]

REDACTED - NONRESPONSIVE

On Tuesday July 20, the White House announced the pick in the Rose Garden of the new FBI Director. Phil, the Attorney General, and Dave Margolis were there. On Tuesday afternoon, Vince Foster left the White House and killed himself. He shot himself in the head in a park.

On Wednesday, the White House realized that someone would have to come and take a look at the records in Vince Foster's office as part of a preliminary inquiry to rule out -- for suicide. Phil Heymann and Janet Reno decided that Roger Adams would go. Roger suggested that maybe there was a problem because he had worked at the White House for several months.

During this period of time, the Attorney General made a big deal about getting a hold of Phil while he was speaking at the Marriot while he was speaking at a Youth Violence Symposium. In any event, it was decided that Dave Margolis and Roger Adams would go over to the White House. David and Roger did go over. I believe it was on Wednesday briefly just to put a yellow tape on the door with the Park Police in the regular course of business. They determined at that time that they would come back and search the office the next day.

The next day was a disaster. I first realized there was a problem when I saw Phil Heymann on the phone with Bernie Nussbaum. I walked into the conference room and sat down. This was probably about 10:30 or 11 in the morning when he should have been in the Crime Bill pre-meeting in room 4118. Phil was on the phone with Bernie Nussbaum and he said: "You are messing this up very badly. I think you are making a terrible mistake." And what I took it to mean, in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents.

I later heard from David that in fact what had happened was that Bernie looked at the documents and told him that a privilege was asserted or was not asserted. This was in contrast to what Phil and Bernie had decided the day before. Only I and Phil were present.

Phil and Bernie seemed to be in agreement on the entire thing but

July

Tues 20 — Foster suicide
Found 9:00 P.M.

Wed 21 — PH → RH stand by to watch search of Foster documents
RH → PH my role in WH counsel's ofc might be a problem
AG → RA is there a problem
PH → RA 3:00 no problem
PH · RA · DM look at the documents -- be satisfied by looking at first page
met with Capt Charles Kunz -- set up procedure to check for classified and sensitive papers
DM → PH do want FBI in
PH → CH being in FBI
CH they're in

assume PH has called BN at suggestion of:
"anything to do with his work death"
waiting for a call from Park Police

5:00

agents, park police, DM, RA, Stu Newstead all in Bernie's ofc -- agree to come back the next morning -- will use the system we've agreed on
BN agrees
SA says "no"
DM says its a done deal and BN agrees

Park Police not allowed into the office which is secured

return and brief PH

late call from Charlie Kunz



Thurs 22 RA • DM to be 3 at 10:00 AM

RA • DM to look at stuff
BN "Change in plan. You observe us as we do the search"
DM "have you talked to PH" — BN ~~I don't know~~
DM ⇒ PH what about this -- huge mistake -- do we stay if BN says "no" -- probably stay
10:30 PH ⇒ DM — terrible mistake you're making a mistake -- I'll call RA and DM back here -- BN ⇒ PH "I have to talk to some people about this"

BN ⇒ DM don't leave -- panic by BN and CS thinking that they had left

1:00- BN "we'll do it my way -- get police in" --
2:30 DM "~~if this went to a~~ I'd have a sub poena going over documents -

BN ⇒ DM "I can not keep the office secured or documents segregated any longer"

"give them to family lawyer and get them out of BN's hands"

9:00 PH → BN — "you ~~ruined~~ us" — BN → PH we're not hiding anything

Friday 23 DOJ out of it — info from Park Police

June 27 BN: wanted me there

Tues 24 AGAC — 5:15 go to WH; rode over with AG
Bernie reveals note
AG said turn it over
called Park Police (DMwa)
BN → PH stay
BN assembled note and read it aloud
rode back with PPolice

Wed 25 we call FBI — want an aggressive investig.

Thurs 29 Collier calls 8:25 — visits shortly thereafter
WH treating PPolice unprof.
PPol may have to pull them out

16:37, 11:00

PH calls Dargen --
full and vigorous investig --
have to let FBI interview
w/o anyone being present -- Ill
call them back when you've
assembled everyone

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, AUGUST 3, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 640–A of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The hearing will come to order. Our first panel consists of Mr. Castleton and Ms. Huber.

Will you stand for purposes of the oath?

Mr. Castleton, if you have a statement that you would like to give, and Ms. Huber, if you have a statement that you would like to give, we would be pleased to receive them.

Mr. Castleton.

SWORN TESTIMONY OF THOMAS CASTLETON FORMER SPECIAL ASSISTANT TO WHITE HOUSE COUNSEL

Mr. CASTLETON. I don't have a statement, Senator.

The CHAIRMAN. OK. Ms. Huber.

SWORN TESTIMONY OF CAROLYN HUBER, SPECIAL ASSISTANT TO THE PRESIDENT FOR PERSONAL CORRESPONDENCE

Ms. HUBER. No, I don't.

The CHAIRMAN. All right. I want you to relax, take whatever time you need, and we will turn this over to Mr. Chertoff, who will ask you some questions.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Good morning. Ms. Huber, where do you work now?

Ms. HUBER. I work in the White House.

Mr. CHERTOFF. You've worked in the White House since the inauguration?

Ms. HUBER. February 1st.

Mr. CHERTOFF. Of 1993?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. I take it you go back with the Clintons a long way?

Ms. HUBER. Yes, sir.
Mr. CHERTOFF. You worked in the Rose Law Firm.
Ms. HUBER. Yes.
Mr. CHERTOFF. What was your position at the Rose Law Firm?
Ms. HUBER. The last 12 years I was Office Administrator.
Mr. CHERTOFF. Office Administrator.
Ms. HUBER. Yes, from 1981 until January 31, 1993.
Mr. CHERTOFF. Might I suggest you move the microphone a little bit closer.
Ms. HUBER. Yes.
Mr. CHERTOFF. You can actually move it. You don't have to move to it.
The CHAIRMAN. That's it.
Ms. HUBER. OK.
Mr. CHERTOFF. Did you also work at the Governor's Mansion when President Clinton was Governor of Arkansas?
Ms. HUBER. Yes, sir.
Mr. CHERTOFF. What were your duties there?
Ms. HUBER. I was the Mansion Administrator.
Mr. CHERTOFF. Now, what do you do at the White House?
Ms. HUBER. I work in the East Wing. I am the Special Assistant to the President for Personal Correspondence, and that is First Family that we receive in my office.
Mr. CHERTOFF. Do you also have other duties in the residence in terms of maintenance of records and files?
Ms. HUBER. Yes, sir.
Mr. CHERTOFF. Mr. Castleton, what do you do now?
Mr. CASTLETON. I work at the Justice Department.
Mr. CHERTOFF. For whom do you work?
Mr. CASTLETON. For the Office of Legislative Affairs.
Mr. CHERTOFF. Did you work in the White House in 1993?
Mr. CASTLETON. Yes, I did, sir.
Mr. CHERTOFF. What was your position there?
Mr. CASTLETON. I was Special Assistant to the Counsel.
Mr. CHERTOFF. Who was the Counsel at that time?
Mr. CASTLETON. Bernard Nussbaum.
Mr. CHERTOFF. I would like to direct your attention to July 1993, and particularly to the period after July 20, 1993, which is the date that Vincent Foster committed suicide. Mr. Castleton, when did you first learn about what had happened to Mr. Foster?
Mr. CASTLETON. I believe it was on the morning of July 21, sir.
Mr. CHERTOFF. Did you ultimately go to the funeral on the 23rd?
Mr. CASTLETON. I did not.
Mr. CHERTOFF. You are aware of the fact that a number of people from the White House Counsel's Office went to the funeral on the 23rd?
Mr. CASTLETON. Yes, I am.
Mr. CHERTOFF. That was a Friday?
Mr. CASTLETON. I believe so, sir.
Mr. CHERTOFF. Am I right in the period of the day or two between Mr. Foster's death and the funeral, there were some preparations being made in the White House Counsel's Office for the trip out to Arkansas?
Mr. CASTLETON. I'm sorry, the night before, sir?

Mr. CHERTOFF. During the couple of days between the death and the funeral, people in the White House Counsel's Office were making preparations for the trip out?

Mr. CASTLETON. I believe that there were people in the Counsel's Office who were discussing who would be attending the funeral.

Mr. CHERTOFF. So I would like to keep your attention focused on that period of the couple of days between the time of Mr. Foster's death and the time that people left for the funeral. I want you to have that in your mind because that's the period about which I'm going to be asking you questions. During that period of time, did you carry a box or boxes to the White House residence?

Mr. CASTLETON. Yes, I did.

Mr. CHERTOFF. Would you tell us how that came about?

Mr. CASTLETON. I don't have a clear recollection as to who asked me to carry the box or boxes. My best recollection at this point in time is that it was a box. I believe that I volunteered to help carry the box, picked up the box and proceeded to take it over to the residence.

Mr. CHERTOFF. What kind of box?

Mr. CASTLETON. I'm not sure that I know exactly how to answer that, sir.

Mr. CHERTOFF. Was it the kind of box used to carry records or files?

Mr. CASTLETON. It was a run-of-the-mill, generic storage box.

Mr. CHERTOFF. Storing paper records box?

Mr. CASTLETON. I think you could use it to store paper records if you chose to do so.

Mr. CHERTOFF. Of a sufficient size to put files in?

Mr. CASTLETON. Yes, it would have been a sufficient size, in my judgment.

Mr. CHERTOFF. Where did you pick that box up?

Mr. CASTLETON. I'm not exactly sure which office I picked up the box from. My best recollection at this time is that I picked it up in either Maggie Williams' office or the First Lady's office.

Mr. CHERTOFF. Now, I want to just let you know where we are in the state of the record: We have received evidence that, in fact, the box was in Mr. Foster's office. Did you understand the box you were taking up was a box of files that originated in Mr. Foster's office?

Mr. CASTLETON. I did understand that, sir.

Mr. CHERTOFF. You heard that from Maggie Williams.

Mr. CASTLETON. Yes.

Mr. CHERTOFF. In fact, it was Maggie Williams, the Chief of Staff to the First Lady, that you accompanied in taking this box up to the residence; right?

Mr. CASTLETON. That's right.

Mr. CHERTOFF. We have evidence from Ms. Williams that, in fact —and from Ms. Gorham, who I take it you remember as having worked in the White House Counsel's Office?

Mr. CASTLETON. Yes, I do.

Mr. CHERTOFF. We have testimony from both of those individuals that, in fact, the box from Mr. Foster's office was picked up by you somewhere in the suite. Is that something that you have a recollec-

tion of not having happened, or is it possible that is where you picked up the box?

Mr. CASTLETON. It is possible, sir. My recollection, however, is that I picked it up outside of the suite, and that is my best recollection as of today.

Mr. CHERTOFF. Now, you also recall, as you said, that you didn't go directly up to the residence, but you either stopped in the First Lady's office or in Margaret Williams' office; correct?

Mr. CASTLETON. I am sorry, sir, I am not following the chain of events that you're——

Mr. CHERTOFF. Isn't it also correct that on that day, when you picked up the box, before you got up to the residence, you also made a stop in either Margaret Williams' office or in the First Lady's office in the West Wing?

Mr. CASTLETON. I don't have a recollection of having stopped before picking up the box in either Margaret Williams' office or the First Lady's office.

Mr. CHERTOFF. Didn't you just tell us a minute ago that you picked up a box in Margaret Williams' office or in the First Lady's office?

Mr. CASTLETON. I think I must have misunderstood the question, sir, because I thought that the question was whether I had stopped prior to picking up the box.

Mr. CHERTOFF. I am sorry. After you had picked up the box outside the White House Counsel's suite, did you also make a stop in either Maggie Williams' office or the First Lady's office?

Mr. CASTLETON. Again, sir, my recollection being that I picked up the box outside of the Counsel's suite, the way that you phrased the question, I can't answer it.

Mr. CHERTOFF. Let me try it again. You pick up the box outside the White House Counsel's suite; right?

Mr. CASTLETON. Right.

Mr. CHERTOFF. After you picked up the box, did you also go with Ms. Williams into either her office or the First Lady's office?

Mr. CASTLETON. I believe that I picked up the box inside of either Ms. Williams' office or the First Lady's office.

Mr. CHERTOFF. So you do have a recollection that during this event which ended with your going up to the residence, you were in Maggie Williams' office or the First Lady's office?

Mr. CASTLETON. That's right.

Mr. CHERTOFF. You remember picking up something in there?

Mr. CASTLETON. That's right.

Mr. CHERTOFF. Now, do you remember Maggie Williams picking dresses up in her office?

Mr. CASTLETON. I believe that the office in which I picked up the box had some dresses, and my recollection is based on having seen her physically carrying them inside the office. I don't know where the dresses came from originally.

Mr. CHERTOFF. Having seen whom carry the dresses in the office?

Mr. CASTLETON. Ms. Williams.

Mr. CHERTOFF. This was on the same occasion that you picked up the box?

Mr. CASTLETON. That's right.

Mr. CHERTOFF. So she came in and picked up some dresses. Is that your testimony?

Mr. CASTLETON. Yes.

Mr. CHERTOFF. And you had a box?

Mr. CASTLETON. Right.

Mr. CHERTOFF. Was there anything else in Maggie Williams' office that you remember being picked up?

Mr. CASTLETON. No.

Mr. CHERTOFF. You then accompanied Maggie Williams up to the residence; right?

Mr. CASTLETON. Yes, I did, sir.

Mr. CHERTOFF. Tell us how you got there from the second floor area of the West Wing where the White House Counsel's Office is and where the First Lady's office is and where Maggie Williams' office is.

Mr. CASTLETON. I believe we took the elevator down, the elevator within the West Wing—I don't remember whether it was to the first floor or to the basement floor—and proceeded to walk out the passageway, which is parallel to or adjacent to the Rose Garden, toward the residence through the Palm Room, and that's how we got into the residence.

Mr. CHERTOFF. Now, where did you go then?

Mr. CASTLETON. I believe that we stopped off for a brief time to pick up a set of keys or a key and proceeded up to the living quarters area of the residence.

Mr. CHERTOFF. Who did you pick up the keys from?

Mr. CASTLETON. I don't remember that, sir.

Mr. CHERTOFF. Is it from Carolyn Huber?

Mr. CASTLETON. I don't have a recollection of having picked them up from Ms. Huber.

Mr. CHERTOFF. Do you now know Ms. Huber to be the woman seated next to you?

Mr. CASTLETON. Yes.

Mr. CHERTOFF. Now, when you got up to the third floor, what happened with the box?

Mr. CASTLETON. I believe that we put it in a room off of a passageway, a passageway that the elevator—there's an elevator within the residence. I believe that we put it in a room that's off that passageway.

Mr. CHERTOFF. Where in the room did you put it?

Mr. CASTLETON. I think it was toward a corner near a closet.

Mr. CHERTOFF. Near a closet?

Mr. CASTLETON. Right. I don't have a recollection as to exactly where in the room we put it, sir.

Mr. CHERTOFF. You were with Maggie Williams while you put it in the room?

Mr. CASTLETON. My best recollection, sir, at this time is that I was.

Mr. CHERTOFF. Let me ask you, Mr. Castleton, on the way up to the residence, after you had picked up the box—you're walking up with Maggie Williams, you're on your way up to the residence. During this period of time, what were you told by Maggie Williams about why the box was being taken up to the residence?

Mr. CASTLETON. I was told that the contents of the box needed to be reviewed.

Mr. CHERTOFF. Reviewed by whom?

Mr. CASTLETON. By the First Lady.

Mr. CHERTOFF. This is something that Margaret Williams told you as you were walking up?

Mr. CASTLETON. As we were walking from the place where I originally picked up the boxes to the residence.

Mr. CHERTOFF. Now, Ms. Huber, let me turn to you.

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. I want to focus your attention on this same period of time, between the death of Mr. Foster and the funeral on Friday. Did you go out to the funeral?

Ms. HUBER. Yes, I did.

Mr. CHERTOFF. OK. I would like you to keep your attention on that 2-day period between the death and the funeral. Do you recall being contacted by Maggie Williams concerning putting a box in the residence?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. When was that?

Ms. HUBER. It was on Thursday afternoon.

Mr. CHERTOFF. Do you remember what time of day?

Ms. HUBER. Between, I would say, 4 p.m. and 6 p.m. I'm not really sure. We were getting ready to go home. It was time to go home, and I do not know the exact time.

Mr. CHERTOFF. What did Margaret Williams say to you?

Ms. HUBER. She called and said that Mrs. Clinton had asked her to call me to take her to the residence to put this box in our third floor office. We call it an office. We have a little closet in there where I keep their financial records, so she asked that I would take it up and put it there.

Mr. CHERTOFF. When you say "their financial records," you mean the Clintons' financial records?

Ms. HUBER. Yes, their personal records.

Mr. CHERTOFF. Had you spoken to the First Lady that day?

Ms. HUBER. No.

Mr. CHERTOFF. Not at all?

Ms. HUBER. No.

Mr. CHERTOFF. Incidentally, were you involved in making preparations for the trip out to Arkansas?

Ms. HUBER. No.

Mr. CHERTOFF. You had nothing to do with it?

Ms. HUBER. No.

Mr. CHERTOFF. Had Margaret Williams, on any earlier occasions, talked to you about ever storing records in the residence?

Ms. HUBER. No.

Mr. CHERTOFF. This was the first time she had ever done that?

Ms. HUBER. Yes, sir.

Mr. CHERTOFF. She told you specifically that the First Lady had made this request?

Ms. HUBER. Yes.

Mr. CHERTOFF. Tell us what happened next.

Ms. HUBER. I told Maggie that when they were ready to bring them over, give me a call; I would meet them at the elevator that

goes up into the residence. I met her and this young man—I do not remember him—Mr. Castleton. We went to the third floor. We went into the room where we have our office. There's a little closet in there. I got the key out of the desk drawer, unlocked the closet and he put the box in.

Mr. CHERTOFF. You were there with Mr. Castleton and Ms. Williams?

Ms. HUBER. And Ms. Williams, yes, sir.

Mr. CHERTOFF. The box was put in the closet?

Ms. HUBER. Yes.

Mr. CHERTOFF. Were there other things in the closet?

Ms. HUBER. Yes, the boxes I keep in there all the time.

Mr. CHERTOFF. There were other financial records of the Clintons in the closet?

Ms. HUBER. Yes.

Mr. CHERTOFF. Can you describe the box that Mr. Castleton was carrying up?

Ms. HUBER. I call it a banker's box, is what I call it. All lawyers have banker's boxes, and it equates to a banker's box.

Mr. CHERTOFF. I guess bankers must have lawyer's boxes, then.

When you say a banker's box, it's a box you would keep documents in?

Ms. HUBER. Yes, you keep records in.

Mr. CHERTOFF. Were there other, similar boxes in the closet?

Ms. HUBER. Yes.

Mr. CHERTOFF. Now, what did you do after you put the box in the closet?

Ms. HUBER. I locked the door, put the key back in the drawer and we went downstairs. I went to my office and went home.

Mr. CHERTOFF. What happened to the dresses?

Ms. HUBER. I never saw any dresses. I am sorry. I have never seen any.

Mr. CHERTOFF. After that occasion did Maggie Williams ever call you up again to have you store records from the West Wing?

Ms. HUBER. No, sir.

Mr. CHERTOFF. Let me ask you one last question, Ms. Huber. We have a record that indicates late in the evening before, on the 21st, the Wednesday, you got paged by Bernie Nussbaum. Do you remember getting that page?

Ms. HUBER. No, because I do not wear a pager. I never wear my pager. So he could page me, but I wouldn't have known it.

Mr. CHERTOFF. Did you talk to Bernie Nussbaum?

Ms. HUBER. No, sir, I have never talked to him.

Mr. CHERTOFF. You have never talked to Mr. Nussbaum?

Ms. HUBER. No.

Mr. CHERTOFF. Do you know where Mr. Nussbaum tried to reach you by page the previous day?

Ms. HUBER. No, sir.

Mr. CHERTOFF. Do you know whether on the previous day Mr. Nussbaum was trying to reach you to make his own arrangements to move any records up to the residence?

Ms. HUBER. No, sir.

Mr. CHERTOFF. So as you sit here, you cannot tell us, you have no idea—and I'm doing this to make it clear rather than to kind

of push you—you have no idea why Bernie Nussbaum would have tried to reach you by page on Wednesday evening before the Thursday the box was moved up?

Ms. HUBER. No, sir.

Mr. CHERTOFF. Just to be clear, I believe you told us a moment ago that after you locked the box in the closet, you put the key back in the drawer?

Ms. HUBER. Yes.

Mr. CHERTOFF. That's the drawer where the key is always kept?

Ms. HUBER. Yes, it's in an envelope, and it says "key to closet."

Mr. CHERTOFF. That makes perfect sense. I think at this point, I am done, Mr. Chairman, and I yield the rest of my time to whoever else on our side wants it.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Castleton and Ms. Huber, thank you very much for being here. You all have taken a great deal of time, but the information you provide is very helpful.

I just want to be clear I understand, and first, starting with Mr. Castleton, we're focusing on July 22. This Committee has heard yesterday from Mr. Heymann that there was a search which was not really trustworthy or reliable. We know from other testimony that the deposition of Mr. Nussbaum has said that he and Ms. Williams put files into a box.

Now, we're at the position where Ms. Gorham earlier this week testified that she asked you to help move the box, and as a good assistant, you did that right away. You moved to help her pick up the boxes. One question that interests me is how long does it take you to go from the place where you picked up the box to the residence? How long a trip is that, 3 minutes, 5 minutes?

Mr. CASTLETON. If you're asking me how long it took on that particular instance, sir, I don't have a very precise answer for you. I think that the trip must have taken sometime between 5 to 12 minutes.

Senator BOND. I don't know the White House that well, so that's why I have to ask. It's not like walking around the corner here, we get on the elevator and go up a couple of floors. It is some distance, is it not, that you had to carry the box?

Mr. CASTLETON. I would not, from my personal experience, gauge it as a long distance. I don't think that it's a very far trip.

Senator BOND. 50 yards total?

Mr. CASTLETON. It was perhaps more.

Senator BOND. You had to hoist that box, a reasonably heavy box?

Mr. CASTLETON. It was approximately 7 to 12 pounds.

Senator BOND. Filled with files and papers?

Mr. CASTLETON. I never saw what was inside the box, so I can't tell you from firsthand knowledge.

Senator BOND. Ms. Williams did tell you that this box was from Vince Foster's office, did she not?

Mr. CASTLETON. She did.

Senator BOND. Along the way, what was it that Ms. Williams explained to you about the boxes and why you were doing this?

Mr. CASTLETON. What she said was that the boxes contained personal and financial records pertaining to the First Family and that we were moving the boxes to the residence for them to be reviewed.

Senator BOND. Mr. Castleton, I don't know how closely you've been following all this, but when Ms. Williams was asked a question in her deposition, "Did you tell him," meaning you, Mr. Castleton, "that the President or the First Lady had to review the contents of the boxes to determine what was in them," she answered, "Why would I tell an intern that?"

Now, that brings us back to the point where it seems that the people who work in the White House who may not be at the top level have good recollections and they can report to us common sense happenings. They have told us the elements of what seems to be a very comprehensive and clear-cut story. There are a couple of discrepancies here. You understand that, being under oath, you have to testify truthfully, and you are clear that you were told this by Ms. Williams?

Mr. CASTLETON. That I was told what, sir?

Senator BOND. That you were told, as you stated, why the boxes were being moved to the residence?

Mr. CASTLETON. Yes, that is my recollection, sir.

Senator BOND. I would say that, again, to my colleagues on the Committee, we have the situation where the big fish is saying that there's no way that she would have told the small fry something that I think is clear on the record here.

Turning to you, Ms. Huber, we, again, very much appreciate your being here.

You have stated when Maggie Williams contacted you, she indicated she had a box the First Lady wanted to store; is that correct?

Ms. HUBER. Yes, sir.

Senator BOND. You just told us about meeting Ms. Williams and a young man on the first floor and taking them to the third floor. You gave the key to Ms. Williams to open——

Ms. HUBER. No, I opened the door.

Senator BOND. You opened it and it's your recollection the young man put the box in the closet or——

Ms. HUBER. Yes, sir.

Senator BOND. Did Ms. Williams at that point tell you why she put the box in the closet or why she had delivered it up there?

Ms. HUBER. No.

Senator BOND. Did she ever indicate who was to review those documents?

Ms. HUBER. No.

Senator BOND. Ms. Williams, would she have had access to that key?

Ms. HUBER. Anybody would. It was in the drawer, if you opened the drawer. They saw me put it back.

Senator BOND. It was marked very clearly.

Ms. HUBER. It said, "key to the closet."

Senator BOND. When you were not there, was your desk locked?

Ms. HUBER. No, it's not locked.

Senator BOND. It was, therefore, accessible to anybody who had access to the residential quarters?

Ms. HUBER. Yes, sir.

Senator BOND. And the box was subsequently removed from the closet?

Ms. HUBER. It's not there now.

Senator BOND. Thank you very much, Ms. Huber.

Mr. Chairman, I'll turn back the questioning.

The CHAIRMAN. In the interest of keeping it moving, Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

Mr. Castleton, when the two Executive Assistants were here—Ms. Tripp and Ms. Gorham—for a while, they couldn't remember the size of the box. I finally found a box out in the hall and held it up and said was it this size, and they said yeah, that's about the size of the boxes. Then we were told there were two boxes. Now, you carried the box. Can you remember how big it was and were there two and give us a sense of how many files there were?

The CHAIRMAN. Senator, this is not to set off a bevy of cameras. This is not intended to be the box, but rather we asked for a regular—there happened to be maybe two of them. They are pretty standard boxes for the carrying—is this a box somewhat——

Senator BOXER. Smile, Robert.

The CHAIRMAN. We don't want to be accused of grandstanding.

Senator DODD. What's inside the box?

[Laughter.]

The CHAIRMAN. It is not intended to be the box, but the kind of box that is used to transport documents, and I think it is for legal papers. Is that the kind of box, Mr. Castleton?

Senator BENNETT. I almost said to the Senator from Connecticut there's nothing inside the box but some little yellow stickies, but I decided——

[Laughter.]

Is this the size of the box?

Mr. CASTLETON. I honestly don't remember what the size of the box was.

The CHAIRMAN. Is it the kind of box with two little handles on it like that?

Mr. CASTLETON. I don't remember if it had handles or not.

Senator BENNETT. Were there one or two?

Mr. CASTLETON. I don't have—my best recollection is there was one. It may have been two.

Senator BENNETT. Ms. Gorham said there were two.

Mr. CASTLETON. Again, my best recollection, Senator, is that I carried one box. It is possible there were two.

Senator BENNETT. So we don't really know how many files we're talking about. Ms. Huber, do you have any idea how many?

Ms. HUBER. I only saw one box.

Senator BENNETT. You only saw one box. All right.

Now, Mr. Castleton, why were you carrying these? I mean, other than the fact that you are polite and you were going to do your job,

but what was your understanding as to why they were being taken into the residence?

Mr. CASTLETON. Again, Senator, my understanding was that they contained documents of a personal and financial nature that pertained to the First Family and they needed to be reviewed because there was an unfamiliarity with what exactly was in those files.

Senator BENNETT. They were being taken to the residence to be reviewed?

Mr. CASTLETON. That's right.

Senator BENNETT. By whom?

Mr. CASTLETON. My understanding from the conversation I had with Maggie Williams was that the First Lady would be reviewing them.

Senator BENNETT. Now, just to nail it down, you carried an indeterminant number of records, maybe bigger than a bread box, but an indeterminant number of records; you can't remember now whether it was one box or two into the residence for the stated purpose that the First Lady would be reviewing them. Is that a summary of your role in this circumstance? I don't want to overstate it and I don't want to understate it; I just want to understand. Do you understand that's what you were doing and why you were doing it?

Mr. CASTLETON. At the time, sir, I understood, as I stated earlier, that I was carrying a box or boxes to the residence because they contained files which had documents, that there was an unfamiliarity with exactly what the nature of the documents were, but that they were of a personal and financial nature, and that they needed to be gone through. And further, my understanding was for disposition; meaning if there were any action items, that those would have to be taken care of.

Senator BENNETT. It would be the First Lady who would make the decision as to the disposition?

Mr. CASTLETON. I did not speak to Ms. Williams at great detail and length about exactly what was going to be done with those documents beyond the fact that they would be reviewed.

Senator BENNETT. Do you have any knowledge as to who had reviewed them previously to determine which went into the box and which folders stayed in the office?

Mr. CASTLETON. I don't.

Senator BENNETT. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Ms. Huber.

Ms. HUBER. Yes. Good morning.

Mr. BEN-VENISTE. Good morning, Mr. Castleton.

Mr. CASTLETON. Good morning.

Mr. BEN-VENISTE. I have just a few questions. First of all, Mr. Castleton, was this a major event in your life, in July 1993, to be carrying boxes at the request of Ms. Williams?

Mr. CASTLETON. Sir, I did not consider it to be a very important event in my life at that time.

Mr. BEN-VENISTE. You are a graduate of Harvard University?

Mr. CASTLETON. Yes, sir.

Mr. BEN-VENISTE. What year did you graduate?

Mr. CASTLETON. In 1993.

Mr. BEN-VENISTE. What was your title at the White House when you began working there?

Mr. CASTLETON. My title from the time that I began working there to the time that I left in September of last year was Special Assistant to the Counsel.

Mr. BEN-VENISTE. I take it you had other functions other than carrying boxes here and there at the White House?

Mr. CASTLETON. That's right, sir.

Mr. BEN-VENISTE. Now, let me go over with you your best recollection of what Ms. Williams said to you, as you recollect, as you were carrying the material to the residence of the White House. I'm reading from page 226 of Mr. Castleton's deposition of June 27, 1995.

The CHAIRMAN. Mr. Castleton, do you have a copy of that? Why don't you turn to page 226, and this way you can——

Mr. CASTLETON. I'm sorry, which page, sir?

The CHAIRMAN. Page 226.

Mr. BEN-VENISTE. Line 12.

The CHAIRMAN. If your counsel wants to sit up there next to you, he can. No problem.

Mr. BEN-VENISTE. Are you with me?

Mr. CASTLETON. Yes.

Mr. BEN-VENISTE. It reads:

Question: What is your best recollection of exactly what Maggie Williams said to you about why she was having you take these boxes to the White House residence?

Answer: My recollection is she said that these were personal and financial documents of the First Family's and that they needed to have them reviewed.

Question: And that who needed to have the documents reviewed?

Answer: The First Family.

Question: Did Ms. Williams tell you that the First Family itself needed to review the documents?

Answer: She didn't say who, specifically, would be reviewing the documents.

Do you recall being asked those questions and giving those answers?

Mr. CASTLETON. Yes, sir.

Mr. BEN-VENISTE. Is that your best recollection of what occurred that day?

Mr. CASTLETON. My best recollection as of today was that she did mention that they would be reviewed by the First Lady.

Mr. BEN-VENISTE. Thank you. With respect to the testimony that you gave about what Ms. Williams said, did anyone at the White House tell you that you ought not to tell anybody what Ms. Williams told you on that occasion?

Mr. CASTLETON. No, sir.

Mr. BEN-VENISTE. Did they tell you to provide your recollection to the best of your ability in giving your deposition and coming here today?

Mr. CASTLETON. Sir, I did not contact, nor was I contacted by the White House regarding my deposition on that day.

Mr. BEN-VENISTE. So it's fair to say, then, that no one advised you about what to say or what not to say here today?

Mr. CASTLETON. No, sir.

Senator SARBANES. Wait a second. You said no, sir. The question was it's fair to say that no one advised you, and the answer to that is it's fair to say that; correct?

Mr. CASTLETON. Yes, sir, and I assume that the question does not require me to reveal any privileged communication with my attorney.

Mr. BEN-VENISTE. With your own attorney.

The CHAIRMAN. Yes, of course not. You're absolutely right. Advice that you have had as it relates to the manner in which you answer questions certainly doesn't involve lawyer-client. Mr. Ben-Veniste is talking about outside people or people telling you what to say or how to say it or coaching you, et cetera.

Mr. BEN-VENISTE. Thank you, Mr. Chairman, that's exactly what I was looking for.

Ms. Huber, your recollection is that sometime between 4 p.m. and 6 p.m. on the 22nd Ms. Williams phoned you and asked you if you would be able to store some material for her in the residence?

Ms. HUBER. Yes, sir.

Mr. BEN-VENISTE. You saw Ms. Williams shortly thereafter, I take it?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. And you saw Mr. Castleton. Did you say that you now recognize him?

Ms. HUBER. Not really, no.

Mr. BEN-VENISTE. It was not a big event for you, either?

Ms. HUBER. No, it wasn't.

Mr. BEN-VENISTE. I take it, given the circumstances of Mr. Foster's death having occurred just a day or two before, your mind was concerned——

Ms. HUBER. My mind was on going to Arkansas the next day.

Mr. BEN-VENISTE. Indeed, I don't believe you have said how long you stayed in Arkansas.

Ms. HUBER. I stayed until the next Sunday because I became ill. I had an ear infection and I had the flu, so I had to stay until the following Sunday. I was there a whole week, until the next week.

Mr. BEN-VENISTE. The whole week you were out of Washington; you were in Arkansas?

Ms. HUBER. Yes.

Mr. BEN-VENISTE. So when the files were retrieved, when the material that was stored in the closet was retrieved, if it was retrieved and sent on to Williams & Connolly during that week, you wouldn't have seen it because you were away in Arkansas?

Ms. HUBER. Yes, sir.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman. Just very briefly—and let me thank both of you for being here. Mr. Castleton, I'm trying to get a sense of having listened to the questions here this morning—I mean, would you consider yourself an intimate friend of the Clintons or Mr. Nussbaum?

Mr. CASTLETON. No, sir.

Senator DODD. In other words, you had worked on the campaign.

Mr. CASTLETON. That's right.

Senator DODD. In 1992 and got a job here in the White House as a result of those efforts, which is commendable. Is that the case?

Mr. CASTLETON. Yes, sir.

Senator DODD. My point I'm trying to drive at here is that this sounds to me like more of a casual situation which you were sought out to help carry something; is that correct?

Mr. CASTLETON. That's exactly right, sir.

Senator DODD. In other words, had someone else been around to maybe do it, they were looking for someone to help carry a box, and it wasn't—they didn't seek out you specifically; is that correct?

Mr. CASTLETON. That's right, sir.

Senator DODD. In fact, in addition to the box, there were some personal items, dresses, I gather other items to carry. This was just asking you to help out, carry those items over to the White House?

Mr. CASTLETON. Yes, sir.

Senator DODD. Did anyone ask you to destroy any documents or to conceal any documents?

Mr. CASTLETON. No, sir.

Senator DODD. Did you destroy or conceal any documents?

Mr. CASTLETON. No, I didn't, sir.

Senator DODD. Did you initiate the conversation regarding what these boxes were to be for, or did Ms. Williams initiate that? She just offered that information, or did you say what are these for?

Mr. CASTLETON. I don't recall having asked her what was in the boxes. I believe that it was actually in the context, as you say, of a more casual conversation, part of which included some reminiscing about Vince.

Senator DODD. OK, Mr. Chairman. Thank you.

Mr. CASTLETON. Can I clarify something for the record, Mr. Chairman?

The CHAIRMAN. Absolutely.

Mr. CASTLETON. Regarding the portion of my testimony which states that I was told that the First Lady would be reviewing them, I later found out through another meeting with Mr. Podesta and Mr. Eggleston that those, indeed, were never seen by the First Lady and were transmitted immediately to the First Lady's or the First Family's attorneys.

The CHAIRMAN. You're saying that there came a time that Mr. Podesta and—who was the other person?

Mr. CASTLETON. Mr. Eggleston.

The CHAIRMAN. Mr. Eggleston told you that the files that you had brought up to the residence were not reviewed by the First Lady?

Mr. CASTLETON. That's right.

The CHAIRMAN. That they were reviewed by who?

Mr. CASTLETON. By the First Family's attorneys.

The CHAIRMAN. By the First Family's attorneys. Do you know when—when did this take place, if you can recall the date they indicated this to you? Was it shortly thereafter?

Mr. CASTLETON. I'm sorry, the particular event you're asking me about?

The CHAIRMAN. With Mr. Podesta, how did that come about?

Mr. CASTLETON. We had a meeting in, I believe it was May 1994, regarding a press inquiry that I had received on a memo that I had written.

The CHAIRMAN. All right. We're not going to press that anymore. Let's continue and add that minute back on, please.

Senator DODD. Mr. Chairman, can I inquire to Ms. Huber——

Ms. HUBER. Yes.

Senator DODD. The closet in which these boxes were placed you mentioned also included other personal financial records of the First Family?

Ms. HUBER. Yes, sir.

Senator DODD. Was it fairly well known that's where—a wide variety of people were aware that's what was in that closet?

Ms. HUBER. No.

Senator DODD. How many people, would you say?

Ms. HUBER. I would only say the First Lady because no one else—I'm the only one that takes care of their personal records.

Senator DODD. Thank you very much, Mr. Chairman.

Senator SARBANES. Senator Bryan.

Senator BRYAN. I pass my round.

Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. I'm going to give my time to Counsel.

I just wanted to follow up on a promise that I had made to enter into the record the inconsistencies that I had found with Officer Henry O'Neill, and I have those 11 documented from his deposition, and I would ask unanimous consent at this time that we place it in the record at whatever point the Chairman feels would be appropriate.

The CHAIRMAN. I'll ask Counsels to decide where to place those in the record. They will be placed in the record.

Senator BOXER. Thank you very much.

The CHAIRMAN. We'll ask that some copies be made.

Senator BOXER. Thank you very much. I just wanted to thank the witnesses for their cooperation and yield the time to Mr. Ben-Veniste.

Mr. BEN-VENISTE. If I might follow up, Mr. Castleton, on the conversation you had with Mr. Podesta and Mr. Eggleston which was sparked by an inquiry from the press.

Mr. CASTLETON. That's right.

Mr. BEN-VENISTE. In that regard, up to that point, I take it, you had no idea what happened to those boxes subsequent to the time that you helped deliver them?

Mr. CASTLETON. That's right, sir.

Mr. BEN-VENISTE. In the course of the discussions about the press inquiry, is it your testimony that Mr. Eggleston and Mr. Podesta mentioned to you that that material was then transmitted from the residence to Williams & Connolly?

Mr. CASTLETON. Yes, sir.

Mr. BEN-VENISTE. You had not known that before.

Mr. CASTLETON. I had not known that before, sir.

Senator SARBANES. Senator Murray.

OPENING COMMENT OF SENATOR PATTY MURRAY

Senator MURRAY. I'll pass on questions at this time.

Senator SARBANES. You can pass it back to your side.

The CHAIRMAN. Senator Bennett, do you have a question?

Senator BENNETT. Mr. Chairman, I have one quick question. You said when you had the meeting with Mr. Podesta, you learned that the material had not been reviewed by any member of the First Family but instead had been turned over to their attorneys?

Mr. CASTLETON. That's right, sir.

Senator BENNETT. You said—the one word that caught my attention, you said "immediately." Were you told that this was turned over to the First Family's attorneys immediately?

Mr. CASTLETON. Senator, my characterization of that—by using the word "immediately," meaning without the documents having been in any way, shape or form reviewed or disturbed or located someplace else, other than where we left them that day.

Senator BENNETT. Because to me, the word "immediately" is a time frame word, and we now know that they stayed in the residence for 5 days, and that does not strike me as immediate.

Mr. CASTLETON. I misspoke, Senator.

Senator BENNETT. OK. Thank you.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I would like to follow up on this a little bit, too, Mr. Castleton, and I want to make sure we have separated what you were told by Maggie Williams and what you were later told—almost a year later—by Mr. Podesta and Mr. Eggleston. Now, your testimony about your conversation with Maggie Williams the day of your taking the boxes up to the residence on July 22, 1993, is that you understood from Ms. Williams that they were going up to the residence so that the First Lady could review them; correct?

Mr. CASTLETON. Yes, sir.

Mr. CHERTOFF. A considerable amount of time then passes, and you find out early in 1994, the following year, that there are press accounts that reveal the fact that boxes or a box was taken up to the residence; correct?

Mr. CASTLETON. I believe that those press accounts came to my attention at that time.

Mr. CHERTOFF. Also as of the spring of 1994, there is now an Independent Counsel named Robert Fiske who's been appointed by Attorney General Reno; correct?

Mr. CASTLETON. Yes, sir.

Mr. CHERTOFF. And you were aware of that?

Mr. CASTLETON. Yes.

Mr. CHERTOFF. Am I right that the event that precipitated the discussion with Mr. Eggleston and Mr. Podesta was a call from a reporter from Newsweek?

Mr. CASTLETON. Yes.

Mr. CHERTOFF. Basically the reporter was trying to get information from you about the movement of the box; right?

Mr. CASTLETON. More specifically, I think that the reporter was asking me a question regarding a memo that I had written.

Mr. CHERTOFF. Which recorded the movement of the box?

Mr. CASTLETON. I don't remember specifically exactly what the—he was reading me a paragraph from that memo, and I can't presently remember exactly what that paragraph referred to.

Mr. CHERTOFF. After getting this call from the reporter, now almost a year after you actually had the conversation with Maggie Williams and you moved the box, you quite properly went to Mr. Eggleston and Mr. Podesta for advice as to how to handle the press inquiry; right?

Mr. CASTLETON. Yes.

Mr. CHERTOFF. Mr. Eggleston was another lawyer in the White House Counsel's Office; right?

Mr. CASTLETON. Yes.

Mr. CHERTOFF. Mr. Podesta was the Staff Secretary; right?

Mr. CASTLETON. I believe that was his position at the time, sir.

Mr. CHERTOFF. He had some relationship, some involvement, or some responsibility for media relations?

Mr. CASTLETON. I was not aware that he was responsible for media relations, sir.

Mr. CHERTOFF. Why did he get involved?

Mr. CASTLETON. I can't answer that question, sir, because I don't have any firsthand knowledge as to why Mr. Eggleston suggested that we speak to Mr. Podesta.

Mr. CHERTOFF. I have a recollection from last year, Mr. Chairman, if I can delve back into my memory, that Mr. Podesta, at some point in time, was involved in what was called the Whitewater damage control team at this point. Does that ring a bell with you, Mr. Castleton?

Mr. CASTLETON. Sir, there was never designated within the White House a so-called——

The CHAIRMAN. Let me make a suggestion. Rather than ask this witness that particular question, when he has answered he didn't know, I will ask that last year's record be reviewed to ascertain, in addition to Mr. Podesta's title, whether or not there was a team. I believe there is some testimony, but let's get it from the record instead of characterizing it.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Senator SARBANES. Why don't we let Mr. Castleton finish his answer.

Mr. CHERTOFF. Please go ahead and finish.

The CHAIRMAN. There was no attempt to cut him off, but I wanted to stop that line of questioning. He was not aware of it. He made this clear and I don't think it's fair to ask him about it. Mr. Chertoff's recollection was that there may have been, and I think there was some testimony about, a group that specifically handled these matters. But let's get that testimony directly from the record.

Senator KERRY. Mr. Chairman, I thought he was answering the question to the effect that there never was any special—he seems to have knowledge.

The CHAIRMAN. If he knows—let me caution you now, and I am going to act as your attorney. Were you aware of any group, because I think there has been testimony that a group had come together for the purposes of handling inquiries. Was Mr. Podesta part of a team that you had known to work on inquiries relating to Whitewater?

Mr. CASTLETON. To my knowledge at that time he had not, sir, but I think the question that I was answering was whether there was such a team or an office. So long as I was at the White House, I was never aware of a specially designated team to handle Whitewater inquiries.

The CHAIRMAN. All right.

Mr. CHERTOFF. So Mr. Castleton, you are now with Mr. Podesta and Mr. Eggleston in about May of 1994, and you are asking them how to deal with this press inquiry and asking for their advice on that; right?

Mr. CASTLETON. Yes. I actually wanted to pass it off.

Mr. CHERTOFF. Now, how is it in this conversation that you were told that the First Lady and the President had never reviewed the documents?

Mr. CASTLETON. Again, sir, I think it was in the context of that memo which we were discussing, and I actually would like to get a copy of that.

Mr. CHERTOFF. I think I might have a copy with me. If it would be helpful to the witness, it is 621 to 622 in the Z series. Do you have a copy, or do I need to send one down to you?

Mr. CASTLETON. I do have a copy. Thank you.

Mr. CHERTOFF. Again, if that refreshes your memory, I want to get you back, now; we're in the spring of 1994. You've gotten a call from a reporter about the events of the previous year, and you are passing the inquiry on to Mr. Podesta and Mr. Eggleston; right?

Mr. CASTLETON. I was discussing that with them.

Mr. CHERTOFF. How is it that they wind up telling you that, in fact, the documents were never reviewed by the First Lady or the President?

Mr. CASTLETON. I believe we were discussing a reference in this paragraph within the memo where it states that I had helped to transport files to the residence.

Mr. CHERTOFF. Why don't we put it up on the Elmo. It will make it a little easier. Let's move down to the third paragraph here, and let's read together because I gather this is the paragraph that Mr. Eggleston and Mr. Podesta were focusing your attention on. You wrote this as of May 26, 1994; right?

Mr. CASTLETON. Right.

Mr. CHERTOFF. It says:

> It was my understanding that certain documents and files had already been removed from Mr. Foster's office for the purposes of complying with ongoing or past investigations and were being held by either Mr. Nussbaum, another attorney on our staff, the First Lady, or the President and First Lady's personal attorneys. Shortly after Mr. Foster's suicide, I helped transport files originating in Mr. Foster's office to a room in the residence.

Is this the passage that they were focusing your attention on?

Mr. CASTLETON. Yes, sir.

Mr. CHERTOFF. But they weren't asking you. They told you something; right?

Mr. CASTLETON. No, we were discussing the—because they were not intimately familiar with that particular event, so we were discussing, as we are now, the particulars of that event.

Mr. CHERTOFF. You told them what you remembered from the previous year; right?

Mr. CASTLETON. Right, including my conversation with Ms. Williams.

Mr. CHERTOFF. Then they said to you what?

Mr. CASTLETON. They asked me to clarify in my mind whether I remembered that reference specifically to the First Lady. And after discussing that for a while, in the context of discussing that, they told me that the files had indeed been transmitted to—I believe it was Mr. David Kendall at Williams & Connolly.

Mr. CHERTOFF. But they also—I thought you told me they were not very familiar with this incident?

Mr. CASTLETON. They were not familiar with the specifics of my personal involvement.

Mr. CHERTOFF. Then after they had, in a sense, extracted from you or asked you questions about what you remembered, they then actually gave you information?

Mr. CASTLETON. In the process of discussing this, we were exchanging information, so I did not think that it was unusual to do that.

Mr. CHERTOFF. The information that they gave to you was that, in fact, the President and the First Lady had never actually looked at the files. Is that your recollection?

Mr. CASTLETON. I'm sorry, can you repeat that?

Mr. CHERTOFF. The information that they gave to you was that, in fact, the President and the First Lady had never looked at the files?

Mr. CASTLETON. That's right.

Mr. CHERTOFF. Did you know why they felt a need to tell you that?

Mr. CASTLETON. I think, again, it was as a point of information, sir. That's—I don't know. You would have to ask them, sir.

Mr. CHERTOFF. Did you at some point learn about whether, during the period of time the box was in the White House residence, a file was returned from the residence back into the White House Counsel's Office?

Mr. CASTLETON. I do not have any knowledge of that ever having happened, sir.

Mr. CHERTOFF. Did they in any sense, in the conversation where they told you about the fact that the First Lady and the President had actually not reviewed the documents, give you any sense, perhaps, that this is something you ought to convey to the press or keep in your mind if you were ever asked questions about this?

Mr. CASTLETON. No, sir. Again, the purpose of that conversation, as far as I was concerned, was that somebody else handle the press inquiry. My understanding of the conversation that we had was, in the process of answering the press inquiry, we had to get information exchanged, and I did what I could to contribute to that.

Mr. CHERTOFF. One last question, Mr. Chairman, if I may.

Do you know how they learned or how they knew that the President and the First Lady had never looked at the documents when they were in the residence?

Mr. CASTLETON. No, sir.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. If I might, and I am impinging on the other side —basically with respect to the press inquiry, you asked for some

advice, and in telling them what you recalled, they indicated, in fact, the First Family did not see the documents. Is that fair?

Mr. CASTLETON. I think that's a fair characterization, sir.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. To follow up on this, Mr. Castleton, when you were interviewed by Mr. Eggleston and Mr. Podesta, were they interrogating you in the manner that Mr. Chertoff has just a moment ago?

Mr. CASTLETON. I would not characterize that discussion as an interrogation.

Mr. BEN-VENISTE. Who is Mr. Eggleston?

Mr. CASTLETON. Mr. Eggleston was an Associate Counsel to the President at the time.

Mr. BEN-VENISTE. At the time of——

Mr. CASTLETON. At the time that we're discussing, when this event happened, when the press inquiry occurred.

Mr. BEN-VENISTE. Was he an Associate Counsel in July 1993, when these events occurred?

Mr. CASTLETON. No, he was not, sir.

Mr. BEN-VENISTE. So he was learning information, and you were imparting information?

Mr. CASTLETON. That's right.

Mr. BEN-VENISTE. Now, let's be very clear about this in terms of your recollection. The suggestion has been made here that perhaps you were being told what to tell the press about whether or not the First Lady and the President had reviewed those files. Do you accept that suggestion that that is what you were being told?

Mr. CASTLETON. Sir, it was never my intent to communicate with the press directly, and the whole purpose of the conversation was actually so that I could get somebody else to handle this inquiry.

Mr. BEN-VENISTE. Did you ever tell anyone that the President and the First Lady had not, to your knowledge, reviewed these files?

Mr. CASTLETON. Outside of the depositions that we have discussed prior to now and my testimony right now, no, I haven't.

Mr. BEN-VENISTE. Well, in your testimony in your depositions and your testimony here today, you've been very clear that you had no idea what happened to the files after you delivered them to the residence.

Mr. CASTLETON. Between—well, sir, I don't have any firsthand knowledge of that. I just know what I've been told.

Mr. BEN-VENISTE. Right.

Mr. CASTLETON. So I don't have—I can't testify as to any firsthand knowledge as to what happened to those files because I didn't participate in that transmittal.

Mr. BEN-VENISTE. To follow up on the suggestion that you may have been told what to tell other people about whether the First Family had reviewed these files, it is correct, is it not, that you never did any such thing?

Mr. CASTLETON. No, sir.

Mr. BEN-VENISTE. By no, you mean yes.

Mr. CASTLETON. "No" means that I have never transmitted the information to anybody in the media.

Senator SARBANES. Anyone else?
Senator KERRY. Yes, I would.
Senator SARBANES. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Castleton, I want to understand. You, in your deposition, say you cannot remember specifically how many boxes. Is that accurate? Are you still in doubt as to whether there was one or two?

Mr. CASTLETON. I cannot tell you with 100 percent certainty whether it was one or two.

Senator KERRY. Can you, Ms. Huber?

Ms. HUBER. Yes. There was only one box.

Senator KERRY. You don't remember how you were carrying them or it?

Ms. HUBER. Me? I wasn't carrying it. Mr. Castleton carried it in his arms like this.

Senator KERRY. How long was the box you were carrying?

Ms. HUBER. It's about the size of that banker's box that——

Senator KERRY. Mr. Castleton——

Ms. HUBER. —maybe a little larger.

Senator KERRY. Do you recall the kind of box—had you ever carried a box over to the White House before, to the residence?

Mr. CASTLETON. No, sir.

Senator KERRY. Had you been in the residence previously?

Mr. CASTLETON. Not in the living quarters, as far as I can remember.

Senator KERRY. Excuse me?

Mr. CASTLETON. Not in the living quarters area of the residence.

Senator KERRY. So this was an unusual event.

Mr. CASTLETON. Yes.

Senator KERRY. But you can't remember whether you were carrying one big box or two? That seems——

Mr. CASTLETON. Although it was an unusual event in terms of me being in the living quarters of the White House, the fact that I was carrying a box or boxes was not what made it unusual, so that is not what sticks out in my memory most acutely.

Senator KERRY. Was the box an open box, or did it have a cover on it?

Mr. CASTLETON. I don't think it was open.

Senator KERRY. Do you recall, Ms. Huber?

Ms. HUBER. It had a lid on it.

Senator KERRY. It had a lid on it. Do you recall whether anyone else carried any other box or a box while you were carrying yours?

Mr. CASTLETON. No, I don't.

Senator KERRY. Do you know that they specifically didn't, or you just don't have a memory?

Mr. CASTLETON. I don't have a memory of that.

Senator KERRY. Did you recall passing by a number of different people as you went to the residence?

Mr. CASTLETON. I don't have any specific recollection as to, in this case, people that we passed along the way, but we did pass a number of people.

Senator KERRY. Did you make any effort to hide what you were doing?

Mr. CASTLETON. No.

Senator KERRY. Did anybody suggest to you you ought to?

Mr. CASTLETON. No.

Senator KERRY. And was this done in full view of everybody around?

Mr. CASTLETON. Yes.

Senator KERRY. What were the circumstances, if you can be more specific, as to how Ms. Williams framed what you were doing? What did she specifically—you were walking around in the general area of the office; is that right?

Mr. CASTLETON. In the general area of the Counsel's Office.

Senator KERRY. Of the Counsel's Office.

Mr. CASTLETON. I believe that I was within—inside the suite.

Senator KERRY. Who flagged you to undertake this mission?

Mr. CASTLETON. I don't specifically remember, Senator.

Senator Kerry. You have no recollection of that?

Mr. CASTLETON. No.

Senator KERRY. Do you recall specifically what you were asked to do?

Mr. CASTLETON. No, I don't recall specifically what I was asked to do.

Senator KERRY. Do you recall where it was that you were told of the reason for taking this box?

Mr. CASTLETON. No, I don't. It was on the way from the West Wing. It could have been inside the West Wing actually, but——

Senator KERRY. How did it come up? Did you turn and say what are we doing? Why are we taking this box? What's in this box? Did you ask a question?

Mr. CASTLETON. I don't remember asking a question, Senator.

Senator Kerry. Was this just volunteered, spontaneous, that the mission was described to you?

Mr. CASTLETON. I couldn't characterize it that way since I have a very vague recollection as to how that subject came about.

Senator KERRY. Was your recollection also vague as to what was specifically said to you?

Mr. CASTLETON. It depends on what specifically you are talking about.

Senator KERRY. With respect to taking the box there so that it could be reviewed, the materials could be reviewed—isn't that your testimony in the deposition?

Mr. CASTLETON. Yes.

Senator KERRY. You specifically remember that being said to you, or is it possible that that is also foggy in the context that these other events are foggy?

Mr. CASTLETON. No, that is more sharply defined in my recollection.

Senator KERRY. Can you tell me why that is more sharply defined?

Mr. CASTLETON. No, I can't, Senator.

Mr. KERRY. Can you tell me how it is more sharply defined, what specific language was used?

Mr. CASTLETON. I can't recall the specific language that was used in that conversation in conveying that to me.

Senator KERRY. Was there something about that, that there is a reason it stuck in your mind?

Mr. CASTLETON. I do not think I can point to anything in particular.

Senator KERRY. Ms. Huber, with respect to the call that you got from Maggie Williams, can you share with us precisely what she said at that moment?

Ms. HUBER. Maggie Williams called me and said that Mrs. Clinton had asked her to call me to take her—she had a box of records to store. She wanted me to take them to the residence on the third floor, where we have an office and we keep their personal records.

Senator KERRY. Is that the full extent of the message that was relayed to you?

Ms. HUBER. Yes, sir.

Senator KERRY. She told you to what, anticipate Mr. Castleton?

Ms. HUBER. She didn't tell me anything about anticipating anything.

Senator KERRY. How did you, then, learn they were coming?

Ms. HUBER. I told her I would meet her at the elevator to go upstairs with her to the residence. I'm in the East Wing, so I met them at the elevator that goes to the residence.

Senator KERRY. Did she at that time inform you with any specificity as to what the box contained?

Ms. HUBER. No.

Senator KERRY. Did she say anything about where it should be put with greater specificity, or was that left completely to you?

Ms. HUBER. That was my discretion.

Senator KERRY. I have no further questions. Thank you.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Huber, 2 days ago, Ms. Tripp, Linda Tripp, Mr. Nussbaum's assistant, said that you were frequently coming and going from Mr. Foster's office with documents. Were you, in fact, a frequent visitor?

Ms. HUBER. No, I was not.

Senator FAIRCLOTH. Did you take documents back and forth from the Clintons to Mr. Foster's office?

Ms. HUBER. I may have sent a couple of folders, but it wasn't frequently. He was working on the blind trust, so I had to provide him financial information for the blind trust.

Senator FAIRCLOTH. Ms. Tripp said that Mr. Foster spent an inordinate amount of time on personal business related to the Clintons. Did you take personal documents of the Clintons back and forth between them and Mr. Foster for things Mr. Foster was working on?

Ms. HUBER. I took some, but it wasn't frequently.

Senator FAIRCLOTH. You have no idea what the subject of them might be?

Ms. HUBER. Yes. It was the blind trust.

Senator FAIRCLOTH. They all involved the blind trust?

Ms. HUBER. Yes, sir.

Senator FAIRCLOTH. This might have been asked before, but what did Ms. Williams say to you about moving documents over to the residence on July 22, and what did she say regarding the First Lady's instructions on moving the documents?

Ms. HUBER. She called me and said Mrs. Clinton asked her to call me to take the—she had a box of records. She called and asked if I would go up to the residence and store them where we kept their personal financial records.

Senator FAIRCLOTH. Mrs. Clinton did not contact you about moving the documents?

Ms. HUBER. No, she did not.

Senator FAIRCLOTH. Were you instructed by either Ms. Williams or Mrs. Clinton a specific place to place the box?

Ms. HUBER. No.

Senator FAIRCLOTH. That was your choice?

Ms. HUBER. That was my choice.

Senator FAIRCLOTH. Now, you put the documents in a closet?

Ms. HUBER. Yes. Mr. Castleton had the box in his arms. I opened the door—unlocked it, opened the door, put it in, we locked it back, put the key in the drawer, and came back downstairs.

Senator FAIRCLOTH. Did you ever learn whether the Clintons reviewed these documents before they were given to Bob Barnett, the Clintons's lawyer?

Ms. HUBER. No, sir, I did not.

Senator FAIRCLOTH. You don't know whether they reviewed them or not?

Ms. HUBER. No.

Senator FAIRCLOTH. This particular place in the residency, is this closet located in the residence that the President and Mrs. Clinton are familiar with in which they would likely go to find things or to get personal documents brought over from the West Wing?

Ms. HUBER. Yes, they know where it is.

Senator FAIRCLOTH. When did you notice that the box of documents were no longer in the closet where you had locked them up for safekeeping?

Ms. HUBER. I have no recollection. I did not go in that closet every day. It might be a week, it might be 2 weeks. It might be a month. I have no——

Senator FAIRCLOTH. What did you do when you did find out there were documents no longer in the closet?

Ms. HUBER. I didn't do anything.

Senator FAIRCLOTH. You didn't——

Ms. HUBER. It was none of my business. I didn't know what the box was. I didn't have any idea. I didn't care.

Senator FAIRCLOTH. Since then, have you ever spoken to Maggie Williams or the First Lady about what might have happened to it?

Ms. HUBER. No, I have not.

Senator FAIRCLOTH. I'm sure you're right, but it seems a little cavalier, strange to me that you put a box, locked it in a closet in the residence for the First Lady and the President—and not much passage in and out of that area, I would assume?

Ms. HUBER. That's true.

Senator FAIRCLOTH. All of a sudden you discover it's missing or gone, and you don't notify them at least to find out if it's—wouldn't that excite your——

Ms. HUBER. No, it didn't.

Senator FAIRCLOTH. Well, if it didn't, it didn't. Ms. Huber, you worked in the Rose Law Firm for 12 years?

Ms. HUBER. I worked there longer than that.

Senator FAIRCLOTH. Longer than 12 years. In your opinion, was this box full, half full, or how many papers were in it?

Ms. HUBER. I would have no idea. I didn't look in it and I didn't lift it, so I don't know.

Senator FAIRCLOTH. You don't know. Ms. Huber, as bookkeeper for the Clintons, as someone who worked on taxes for the Clintons—I understand you did—did you ever see any Whitewater documents in Vince Foster's office or pay any Whitewater-related bills for the Clintons?

Ms. HUBER. The only thing that I know is I have seen a check where we paid the income tax and they paid their—when they paid out a check to pay Mr. McDougal, the $1,000, and that was in December 1992.

Senator FAIRCLOTH. That's the only——

Ms. HUBER. Yes. I've never seen any Whitewater documents.

Senator FAIRCLOTH. Did you ever pay any loans of the Clintons, bank loans such as to the Bank of Cherryville, Bank of——

Ms. HUBER. I did not pay them, but I've seen the notes and the checks. But I did not write those checks.

Senator FAIRCLOTH. You didn't pay them, but you saw the paid notes and the canceled checks?

Ms. HUBER. Yes.

Senator FAIRCLOTH. All right. Thank you.

The CHAIRMAN. We have a vote on. I don't know if there are—Senator, do you have another question?

Senator FAIRCLOTH. I was going to just ask a couple of questions to Mr. Castleton.

The CHAIRMAN. Go ahead.

Senator FAIRCLOTH. If we have time before the vote.

The CHAIRMAN. Yes, I think we do.

Senator FAIRCLOTH. Mr. Castleton, did Maggie Williams tell you why you were transporting the boxes to the residence from Vince Foster's office? That you were doing so because the President and Mrs. Clinton wanted to go through the documents? Did Maggie Williams tell you that?

Mr. CASTLETON. My best recollection as of today, Senator is that she said that the documents needed to be reviewed—the files needed to be reviewed to determine what was inside them, and they would be reviewed by the First Lady.

Senator FAIRCLOTH. Mr. Castleton, when you left the White House, did you accept the job at the Justice Department?

Mr. CASTLETON. Before I left the White House, I accepted a job at the Justice Department, yes, sir.

Senator FAIRCLOTH. Was that job with Sheila Foster Anthony?

Mr. CASTLETON. I began working in the Office of Legislative Affairs, and Sheila Anthony was the Assistant Attorney General for Legislative Affairs.

Senator FAIRCLOTH. She was Vince Foster's sister.

Mr. CASTLETON. That's my understanding, Senator.

Senator FAIRCLOTH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Does anyone else have any questions? We have no further questions.

Senator SARBANES. There's a vote on, Mr. Chairman.

The CHAIRMAN. Let me thank this panel.

Mr. Castleton, I want to commend you for your straightforwardness and the manner in which you have handled a situation that has to be of tremendous weight on you as a young person—especially given the almost microscopic inspection that takes place. There have been others who would have done well to follow your example in being truthful and candid and not going one way or the other, but recalling to the best of your ability what took place. It's refreshing.

Ms. Huber, I certainly understand that you didn't even get back to the White House for almost 10 days, and I want to thank you for your cooperation and testimony today as well.

Ms. HUBER. Thank you.

The CHAIRMAN. We stand in recess until the conclusion of this vote. That should be about 15 minutes and then we'll be back and we'll start with our second panel.

Mr. CASTLETON. Thank you, Mr. Chairman.

Ms. HUBER. Thank you.

[Recess.]

The CHAIRMAN. Be seated.

Mr. Sloan and Mr. Neuwirth, if you have statements that you would like to give to the Committee, we would be pleased to receive them.

Mr. SLOAN. Should I start, Mr. Chairman?

The CHAIRMAN. Certainly.

SWORN TESTIMONY OF CLIFFORD M. SLOAN
FORMER ASSOCIATE COUNSEL TO THE PRESIDENT

Mr. SLOAN. Good morning, Mr. Chairman and Members of the Committee. My name is Clifford Sloan. I served as an Associate Counsel to the President from June 1993 to March 1995. Before joining the White House, I had the privilege of serving in all three branches of the Federal Government including positions as an Assistant to the Solicitor General in the Department of Justice, as a Law Clerk to Supreme Court Justice John Paul Stevens and U.S. Court of Appeals Judge J. Skelly Wright; and as an Assistant to Congressman Sidney Yates of Illinois. I am currently a partner at a firm here in Washington.

In my capacity as an Associate Counsel to the President, I was present at certain events and conversations regarding the documents in Vince Foster's office in the days after his death. I recently spent a full day with the Committee staff answering questions, and of course, I will be happy to answer any questions that you may have here today. Before I do so, I would like to make a few brief points.

The first point I would like to make is that to this day my dominant memory and impression of the days following Vince Foster's

death is one of overwhelming disbelief, shock, grief, pain, and sadness. I cannot speak for others, but there is nothing in my experience to compare with the suicide of a friend or colleague. In those days after Vince Foster's death, the pain sometimes seemed almost unbearable, and it made it difficult for people to put one foot in front of the other and make it through the day. I knew Vince Foster for a far shorter time, and far less well, than many people in the White House, but the news of his suicide was devastating for all those who knew and worked with him, including me.

The second point that I would like to make is that in the events and conversations in which I participated, nobody ever took any improper action with regard to the handling of documents in Vince Foster's office. Nor did anybody ever suggest taking any such improper actions.

I also would like to comment on two specific matters that have been the subject of testimony before this Committee. First, the Committee has heard testimony about a comment that I made to FBI Special Agent Scott Salter during the review of documents in Vince Foster's office on the afternoon of July 22, 1993. Without going into all the details, at some point my attention was drawn to the fact that Agent Salter appeared to be looking at the documents on Mr. Foster's desk as Mr. Nussbaum reviewed them.

This seemed to me inconsistent with the procedures as I understood them, and I said to Agent Salter something like, "You're not standing up to look at the documents, are you?" Agent Salter said something to the effect of, "No, I'm not, and let's not get carried away."

Mr. Nussbaum looked up, held up his hand and said, "Wait a minute—I'm not saying that," and it was clear that Mr. Nussbaum disassociated himself from my comment.

I immediately recognized that my comment was inappropriate, and I immediately apologized. It was the wrong thing to say to a law enforcement official, or to any person trying to do his or her job. I thought that my mistake had been put to rest immediately, that day. I learned last week from Mr. Adams' testimony just how strongly he reacted to the incident. If I had known at the time that he remained deeply offended, I would have done more to make it right. In any case, let me take this opportunity to repeat that I apologize to Agent Salter, to Mr. Adams, and to the others present.

The other matter that has come before this Committee is Mr. Spafford's account of an incident after the review of the files in Vince Foster's office on Thursday, July 22, 1993. As I understand Mr. Spafford's account, he says that I picked up Mr. Foster's briefcase, held it open by the handles and remarked to Mr. Nussbaum that there appeared to be scraps of paper in the bottom of the briefcase.

All I can say about that, Mr. Chairman, and Members of the Committee, is that to my recollection that did not happen. By that I mean that I have no recollection of anything remotely like that incident, and I think that I would recall it if it had happened. Mr. Spafford and I have an honest difference in recollection on this point, and I think he is mistaken.

My consistent recollection on this subject has been, and continues to be, that I learned of the scraps of paper for the first time

the night of Tuesday, July 27, 1993. At that time I was told that Steve Neuwirth had found scraps of paper the previous day when packing Vince Foster's briefcase with personal effects to go to the Foster's personal lawyer, and that the scraps had been pieced together to form a note or a writing. That remains my recollection today.

Thank you, Mr. Chairman and Members of the Committee. I will be happy to answer any questions and to assist the Committee in any way that I can.

The CHAIRMAN. Thank you, Mr. Sloan.

Mr. Neuwirth.

SWORN TESTIMONY OF STEPHEN R. NEUWIRTH ASSOCIATE COUNSEL TO THE PRESIDENT

Mr. NEUWIRTH. Thank you, Mr. Chairman and Members of the Committee. Thank you for this opportunity to make a statement. I am Stephen Neuwirth. Since January 26, 1993, I have been an Associate Counsel to the President of the United States.

Approximately 3 weeks ago on July 10 I gave a deposition in connection with this Committee's inquiry. During the deposition in response to questioning I testified about a conversation that I recall having in July 1993 with Bernard Nussbaum, who was then Counsel to the President, in which Mr. Nussbaum referred to a telephone conversation that he had had with Susan Thomases.

About 2 weeks ago, prior to the time when the transcript of my deposition was made available to me, someone who apparently had access to that transcript contacted news reporters and purported to describe my testimony concerning the conversation with Mr. Nussbaum. Whoever spoke to the reporters apparently claimed that I had testified that Mr. Nussbaum told me in July 1993 that the First Lady had intervened to restrict any search of Vince Foster's office. Based on purported descriptions of my testimony, The Washington Post of July 23 ran a front-page story bearing the headline: "Lawyer says Hillary Clinton urged search limit." A New York Times columnist wrote on July 24 that I had, "told Congressional investigators that Susan Thomases, Hillary's confidante, told Nussbaum that the Clintons wanted the search strictly limited."

A review of my deposition transcript, however, shows that whoever talked to reporters about my deposition not only mischaracterized my testimony, but described it in a way that I had expressly rejected during the deposition itself.

I want to make very clear that I am not criticizing either the reporters who were contacted or any columnists who relied on news reports about my deposition. The reporters apparently had a source who claimed to be knowledgeable and reliable, but who clearly provided a distorted rendition of my deposition testimony.

I am restricted from releasing the transcript of my deposition under the terms of a confidentiality agreement that my counsel was required to sign in order to get a copy from this Committee. However, for the purpose of correcting the erroneous public record of my deposition testimony, and with the permission of the Chairman and Ranking Member, I would like briefly to make several points with specific references to the relevant portions of my deposition transcript.

During my deposition, I described certain discussions that Mr. Nussbaum had on July 21 and 22, 1993 with various White House and Justice Department officials regarding the appropriate way in which to conduct a review of the materials in Vince Foster's office.

In response to questions during the deposition, I explained that the subject matter of these conversations was how to accommodate, on the one hand, the need of law enforcement personnel to conduct an investigation into Vince Foster's suicide and, on the other hand, the privileges that might apply to documents in Mr. Foster's office and the concern that permitting unrestricted access to his office might result in a waiver of such privileges. I explained in my deposition testimony that each of the lawyers involved in these discussions seemed to me to have recognized that allowing unrestricted access to Mr. Foster's office would be, at least, problematic in light of the privileges that might apply.

During these discussions in July 1993, the view was also expressed that unrestricted access could set precedents that would have negative long-term implications for the institution of the Presidency.

After I had described these discussions in my deposition, I was asked whether I knew of anyone else that Mr. Nussbaum spoke to with regard to the procedures that would be used in—that would be used, excuse me, to review the documents in Mr. Foster's office.

In response to this question, I referred to a conversation that I had with Mr. Nussbaum in which he mentioned a conversation that he had had with Susan Thomases. I was asked what Mr. Nussbaum said to me and I answered that I don't remember his exact words.

I was asked whether my conversation with Mr. Nussbaum was before the review of documents in Mr. Foster's office that took place in the presence of law enforcement officials on the afternoon of July 22, 1993. I responded, "I'm not sure. I think it may have been, but I'm not positive."

I was asked, "What did Mr. Nussbaum tell you about the conversation he had with Ms. Thomases." I responded, "Again, while I don't remember his exact words, in a very brief discussion, my understanding was that Mr. Nussbaum felt that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office."

Then I was asked whether Mr. Nussbaum indicated that Ms. Thomases had spoken to the First Lady and I answered no.

Counsel for the Majority then asked me, "Did Mr. Nussbaum ever tell you why Ms. Thomases and the First Lady did not want non-White House persons to have unfettered access to Mr. Foster's office?"

In answering, I explicitly rejected the characterization of my previous answers that was implicit in this question. I stated, "Again, I don't know what Ms. Thomases said. I also don't think I said that I understood that Mr. Nussbaum had understood that she and the First Lady did not want people in the office. I think what I said was that my understanding was that Mr. Nussbaum had understood that Ms. Thomases and the First Lady were concerned about the prospect of unfettered access, and I don't know what the basis

was for that concern. He didn't tell me anything else about the conversation."

When I was asked whether I was aware of any other information indicating the First Lady's views with regard to how the search of Foster's office should proceed, I answered no. In response to that question, I also began by stating, "Again, I don't want to characterize what I said as having reflected anything other than my understanding based on what I heard from Mr. Nussbaum."

I was asked, "Did Mr. Nussbaum ever indicate to you he'd spoken to the First Lady?" I responded, "no."

I was also asked whether Mr. Nussbaum, "Ever indicated to me that he took the First Lady's and Ms. Thomases' views into account with regard to the process for review of documents in Mr. Foster's office." I responded that, "He did not discuss that with me." I can tell you today that Mr. Nussbaum never said that to me.

Again, I thank you, Mr. Chairman, and the Committee for the opportunity to make this statement. I would be happy to respond to any questions that the Members or Counsel may have.

The CHAIRMAN. Thank you very much, Mr. Neuwirth.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Neuwirth, do you have a doubt in your mind that if the First Lady expressed a view on the way the documents were to be handled that Mr. Nussbaum would have paid serious attention?

Mr. NEUWIRTH. I'm not aware of the First Lady having expressed any such doubt to Mr. Nussbaum. I don't know how Mr. Nussbaum would react to anything that a particular person would say to him under what circumstances.

Mr. CHERTOFF. Is the First Lady a particular person or the First Lady the client?

Mr. NEUWIRTH. The First Lady is the First Lady, and the circumstances under which she speaks to Mr. Nussbaum are difficult to assess without knowing the particular facts.

Mr. CHERTOFF. My question to you, Mr. Neuwirth, is this: Was the First Lady the client?

Mr. NEUWIRTH. I don't know what circumstance you are talking about when you ask me if the First Lady is the client.

Mr. CHERTOFF. In July 1993, in the White House, in Washington, DC, was the First Lady the client of the White House Counsel, yes or no?

Mr. NEUWIRTH. I think that if the First Lady solicited legal advice from the White House Counsel's Office and the Counsel's Office gave her that advice, depending on the circumstances, there could be an attorney-client relationship.

Mr. CHERTOFF. So you think you have a doubt in your mind as to whether there was an attorney-client relationship between the First Lady and the White House Counsel's Office during the week of July 20, 1993?

Mr. NEUWIRTH. I don't think I said that. I think what I said was that whether a particular conversation takes place in the context of an attorney-client relationship depends on the circumstances in which the conversation takes place.

Mr. CHERTOFF. Now, you understood from Mr. Nussbaum that his understanding was that the First Lady had a concern about unfettered access to Mr. Foster's office; correct?

Mr. NEUWIRTH. I think what I said was that I had understood that he had understood that from his conversation with Ms. Thomases, yes.

Mr. CHERTOFF. Let's see if we can make it even clearer. You had an understanding from your conversation with Mr. Nussbaum that he understood the First Lady was concerned about unfettered access; right?

Mr. NEUWIRTH. I think that's correct, yes.

Mr. CHERTOFF. Do you have a doubt in your mind that Mr. Nussbaum would have paid serious attention to any concern he believed the First Lady had?

Mr. NEUWIRTH. I'm not in a position to tell you what attention Mr. Nussbaum paid to that concern to the extent that he understood it to have been expressed, and Mr. Nussbaum never discussed with me how he took any such concern into account in making his decision about how to handle the review of the documents.

Mr. CHERTOFF. Well, he mentioned it to you; right?

Mr. NEUWIRTH. He mentioned to me his conversation with Ms. Thomases as I just described it here.

Mr. CHERTOFF. Was he laughing about it?

Mr. NEUWIRTH. He did not laugh about it.

Mr. CHERTOFF. Did he appear to be taking it seriously?

Mr. NEUWIRTH. He appeared to be taking it as another comment that had been expressed to him. There were a number of attorneys over the 2 days, July 21 and July 22, who had expressed similar views. When I heard the view it was not a different view from the type that other people had expressed.

Mr. CHERTOFF. The First Lady is an attorney; right?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. In fact, Mr. Nussbaum had worked with her previously in a matter here in Washington; right?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. You understood that Mr. Nussbaum had a lot of respect for Mrs. Clinton's views as an attorney; right?

Mr. NEUWIRTH. I think that's correct.

Mr. CHERTOFF. Also true with respect to Susan Thomases; correct?

Mr. NEUWIRTH. I'm not familiar with how Mr. Nussbaum viewed Ms. Thomases' legal skills.

Mr. CHERTOFF. You have no sense at all of how Mr. Nussbaum viewed opinions of Ms. Thomases?

Mr. NEUWIRTH. I know that Mr. Nussbaum and Ms. Thomases had had a longstanding relationship. I understood that they were friendly, that they had known each other in New York, that they had known each other during the 1992 Presidential campaign, and that they talked to each other periodically, but beyond that I don't know what Mr. Nussbaum's opinion of her was.

Mr. CHERTOFF. She's a New York lawyer?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. She's a partner at a big firm in New York?

Mr. NEUWIRTH. I understand that to be correct.

Mr. CHERTOFF. You have a question in your mind about whether Mr. Nussbaum took her opinion seriously?

Mr. NEUWIRTH. I don't feel that I'm in a position to tell you how Mr. Nussbaum took an opinion when he didn't discuss with me how he took the opinion.

Mr. CHERTOFF. You don't feel you're in a position to evaluate how Mr. Nussbaum took Hillary Clinton's opinions into account; is that your testimony to us?

Mr. NEUWIRTH. I'm not in a position to tell you how Mr. Nussbaum took into account the comments that we discussed earlier that you mentioned in your questions because Mr. Nussbaum didn't tell me how he took them into account.

Mr. CHERTOFF. But he certainly mentioned it to you; right?

Mr. NEUWIRTH. He mentioned to me what I told you this morning he mentioned to me.

Mr. CHERTOFF. Which is that the First Lady had a concern about unfettered access; right?

Mr. NEUWIRTH. I told you that that was what he understood from his conversation with Ms. Thomases.

Mr. CHERTOFF. That's a long way to say yes; correct?

The CHAIRMAN. No, wait. We give a lot of latitude and I have observed that Mr. Neuwirth is taking particular pains to answer the questions as he chooses—that's his right—even though these questions could be answered with a simple yes or no. He has that right so let's continue.

Mr. CHERTOFF. Mr. Sloan, on July 22 you were present in Mr. Foster's office while law enforcement people sat in the room and Mr. Nussbaum reviewed documents; right?

Mr. SLOAN. Correct.

Mr. CHERTOFF. He held the documents up with the printed pages facing him?

Mr. SLOAN. Well, could I just clarify, Mr. Chertoff. Sometimes he did. Sometimes he reviewed them in front of him. Every now and then he would hold up a document so the people in the room could see it. So it——

The CHAIRMAN. Are you saying that he held up a document so that people could read the document?

Mr. SLOAN. Mr. Chairman, let me just be——

The CHAIRMAN. Now, let's——

Mr. SLOAN. —I want to be clear and I'm trying to be as clear as I could in answer to Mr. Chertoff's question. Let me try to clarify. I'm not saying he did that with many documents or that that was his practice. I'm not saying——

The CHAIRMAN. Do you recall any document that he allowed people to read?

Mr. SLOAN. No. I don't remember any particular documents, but I do remember——

The CHAIRMAN. I just think it's important that the characterizations or the descriptions that are given be accurate. OK, go ahead.

Mr. SLOAN. Absolutely, Mr. Chairman. I hope you understand that's exactly what I was trying to do, to be as accurate as I could be in response to Mr. Chertoff's question.

Let me say my understanding of the procedures was that Mr. Nussbaum was reviewing them and the other people in the room

were not, were not seeing them. That is generally what happened. But to be complete in my answer, there was an occasion—it might have been a rare occasion, I don't remember—when he would hold up something. But I don't remember what the substance of it was. But I do not mean to—but I do not mean to imply in the least that that characterized the treatment of documents generally.

Mr. CHERTOFF. You would agree with me, then, that for the most part, Mr. Nussbaum gave a general or cursory description of the documents to the assembled law enforcement people; right?

Mr. SLOAN. That's correct, a general description, that's correct.

Mr. CHERTOFF. After the law enforcement people were ushered out of the room, you remained in there?

Mr. SLOAN. I don't have a clear recollection of that. Well, let me think as I sit here. But I have notes from after the fact, so yes.

Mr. CHERTOFF. You have the notes with you?

Mr. SLOAN. No, not right in front of me.

Mr. CHERTOFF. I think we gave you a copy. Let me just—why don't we get to your notes, Z354, because I want to get your attention focused on a request or instruction that you got from Mr. Nussbaum at the end of this process.

Mr. SLOAN. OK.

Mr. CHERTOFF. At the end of this process he told you to get Maggie Williams; right?

Mr. SLOAN. That is what my notes say. I don't have an independent recollection, but I have no reason to question what's in my notes.

Mr. CHERTOFF. You have no doubt that he gave you that instruction; right?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. And Maggie Williams, at that point, was over in the Executive Office Building.

Mr. SLOAN. I don't know where Maggie Williams was at that point.

Mr. CHERTOFF. Mr. Neuwirth, you were instructed to get Maggie Williams too; right?

Mr. NEUWIRTH. I don't believe I was instructed to get Maggie Williams on that day.

Mr. CHERTOFF. Let me tell you, on Z953 I have a message to Maggie—from Maggie Williams' office from Steve Neuwirth at 2632. Is that your extension?

Mr. NEUWIRTH. That's the——

Mr. CHERTOFF. Was that the White House Counsel's?

Mr. NEUWIRTH. That's in the West Wing, White House Counsel's Office.

Mr. CHERTOFF. July 22, 1993 at 3:25 p.m. Does this refresh your memory that you also reached out for Maggie Williams?

Mr. NEUWIRTH. It shows that I tried to contact her, but it doesn't indicate to me that I was asked by someone to contact her related to this matter.

Mr. CHERTOFF. Why did you want to contact her?

Mr. NEUWIRTH. I can tell you now that I don't recall why I contacted her.

Mr. CHERTOFF. Did you have any other business with her?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. What?

Mr. NEUWIRTH. During this period I was actively involved in the litigation relating to the Health Care Task Force.

Mr. CHERTOFF. Were you doing a discussion with litigation on the Health Care Task Force with her on the afternoon of July 22?

Mr. NEUWIRTH. I don't know if I spoke to her about that. I don't know what this call was about. What I can tell you is that that was a matter that was active at that time——

Mr. CHERTOFF. Was it active on July 22?

Mr. NEUWIRTH. If I could finish, what I was going to say is that as a result of that, Maggie was someone who I knew very well, who I spoke to regularly. I would have, therefore, perhaps called her that day, but I have—I don't believe anyone ever asked me to contact her during either the review or afterwards.

Mr. CHERTOFF. Mr. Neuwirth, I'm going to want you now to pay serious close attention to the question here. The question is not whether during this period of weeks or months you were dealing with the Health Care Task Force. The question is: In the afternoon on July 22, after the procedure with the Park Police and on the eve of having to go to the funeral in Arkansas the next day, during a period of time that everyone has described to this Committee as filled with overpowering grief, is it your suggestion to this Committee that your call to Maggie Williams at 3:25 p.m. in the afternoon might have been about the Health Care Task Force litigation?

Mr. NEUWIRTH. No, I don't think that's what I said. I said that as a result of working on that litigation I had gotten to know her very well, and so I may have contacted her for a variety of reasons. I don't know why, but I certainly don't have any recollection of anyone asking me to contact her for any purpose that day.

Mr. CHERTOFF. You, Mr. Sloan, at least have a recollection, or at least your notes reflect that you were asked to get her; right?

Mr. SLOAN. That's correct, my notes reflect that.

Mr. CHERTOFF. By the way, Mr. Neuwirth, you remember seeing Mr. Sloan in Mr. Foster's office on the afternoon of the 22nd after the Park Police and the FBI had been ushered out; correct?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. Mr. Sloan, do you have any recollection of that?

Mr. SLOAN. I have a vague recollection of talking to Mr. Nussbaum after the people had left. I don't know if it was right afterwards or when, but I don't have any reason to doubt that.

Mr. CHERTOFF. Mr. Neuwirth, didn't you see Mr. Sloan talking to Maggie Williams on that afternoon after the Park Police and the FBI had left in Mr. Foster's office?

Mr. NEUWIRTH. I don't think I—I don't know that I saw Mr. Sloan. I think I saw Mr. Nussbaum talking to her.

Mr. CHERTOFF. Oh, so you were around when he was talking to Maggie Williams?

Mr. NEUWIRTH. I think that I had come back to the Counsel's suite briefly and saw at that time, which I think was some period of time after the review was completed, I saw that Mr. Nussbaum was talking to Ms. Williams in Vince Foster's office.

Mr. CHERTOFF. You didn't see Mr. Sloan doing that?

Mr. NEUWIRTH. I don't believe that I saw Mr. Sloan with Mr. Nussbaum and Ms. Williams at that time.

Mr. CHERTOFF. Mr. Sloan, did you know why Maggie Williams was being summoned at that point in time to come into the Foster office?

Mr. SLOAN. I know it's in my notes, Mr. Chertoff. That's the extent of my knowledge, what's in my notes on this.

Mr. CHERTOFF. Do you know that she was in there so that she and Mr. Nussbaum could review personal documents of the Clintons to be taken up to the residence?

Mr. SLOAN. Let me just back up. I knew, I mean my—well, I don't know all of the things that you put in your question, no.

Mr. CHERTOFF. What did you know?

Mr. SLOAN. OK. What I know is my notes say, "Get Maggie, go through office, get HRC/WJC stuff." I didn't know anything until much later about any followup associated with that. I did not have contemporaneous knowledge of anything beyond what's in my notes on this.

Mr. CHERTOFF. Let's put it up. This is Z354. We'll get it up on the screen here so we can all look at it, be on the same page, so to speak. Right there at the bottom it says, "Get Maggie." That's Maggie Williams; right?

Mr. SLOAN. Correct.

Mr. CHERTOFF. "Go through office"; right?

Mr. SLOAN. That's right.

Mr. CHERTOFF. That's Vince's office?

Mr. SLOAN. That's my understanding.

Mr. CHERTOFF. "Get HRC/WJC stuff"; right?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. That's Hillary Clinton and the President?

Mr. SLOAN. That's right.

Mr. CHERTOFF. You obviously were very concerned about issues of privilege, attorney-client privilege and executive privilege with regard to the desire of the FBI and the Park Police to look at some of those documents; correct?

Mr. SLOAN. Well, I was concerned with adhering to the procedures that I understood that Mr. Nussbaum had adopted which were based on those concerns, that's right.

Mr. CHERTOFF. There was a concern expressed that if the FBI or the Park Police looked at, for example, personal documents of the Clintons, even if they just took a peek at the first page, that that might somehow compromise the Clintons' personal attorney-client privilege?

Mr. SLOAN. Mr. Chertoff, let me be clear about the discussions that I recall from July 21 and July 22 because I don't remember being involved in very many discussions about the substance of the privilege concerns, and I know there's been a lot of testimony before the Committee about back and forth. But just to be clear about what my recollection is. I remember very clearly on the morning of July 22 when Mr. Nussbaum announced the procedure that he was going to use in reviewing documents in the office. As to conversations before that, that stands out in my mind as preliminaries that I don't remember much about.

Now, after these events, I remember a lot of discussions about privilege. But to give you my best recollection, I can't locate in my recollection discussions about privilege that I was involved in dur-

ing that period on the 21st and 22nd. I just need to be clear about that.

Mr. CHERTOFF. What about you, Mr. Neuwirth? Do you have a recollection that the basis of the objection to having the Park Police and the FBI going through the personal papers was based on a concern about privilege?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. Was one of those privileges the attorney-client privilege for the personal documents?

Mr. NEUWIRTH. I wouldn't say that it was attorney-client privilege for personal documents. Mr. Foster was both a senior White House official and a member of the Counsel's Office staff, and so I think that there was a general concern both about what would be called executive or deliberative process privilege and attorney-client privilege within the context of being a White House attorney.

Mr. CHERTOFF. Well, you know the personal papers of the Clintons, their personal tax returns, are not executive privilege. You didn't think that was the case, did you?

Mr. NEUWIRTH. I didn't—I don't recall any conversation in which any of these privileges were talked about in the context of the Clintons' tax returns.

Mr. CHERTOFF. Or let's say any other personal finance records of the Clintons?

Mr. NEUWIRTH. I don't believe there was ever a discussion about their personal financial records in which these privileges were discussed.

Mr. CHERTOFF. This is very interesting because I was laboring under the belief through yesterday that, with respect to all the documents in the office, there was some kind of a concern about the privilege being waived. Are you telling us now that no one ever expressed any concern or resistance to the Park Police or the FBI looking through personal financial papers of the Clintons?

Mr. NEUWIRTH. What I'm telling you is that the discussion focused on the types of materials that would be in Mr. Foster's office, and all of the discussions that I participated in focused on the fact that these were materials relating to his role as a senior White House official and a White House attorney.

I don't believe that other than reference to the fact that he had files concerning Supreme Court nominees, that these conversations focused on any particular document or category of document within his office.

Mr. CHERTOFF. Did you know he had records in his office relating to the personal financial matters of the Clintons?

Mr. NEUWIRTH. I did not know that at the time.

Mr. CHERTOFF. Did you know that, Mr. Sloan?

Mr. SLOAN. I did not know that before the review. Let me make two points just to clarify what I did know.

I had a very general sense that Mr. Foster worked on what I think of in my mind as personal/official matters such as financial disclosure forms and those kinds of things. But I can't—I didn't work with him on those things. I had a general sense of that.

The second point I wanted to be clear about, in my notes of the review on July 22, there are some references, I think, to what might be considered personal financial documents and privilege. On

the bottom of the first page, which is Z340, it says, "Documents related to First Family re: Trust privileged advice." That would have been something Mr. Nussbaum said in the room at the time.

Mr. CHERTOFF. Did you know at the time during the day of the 22nd that personal papers that were held in Mr. Foster's office on behalf of the Clintons were going to be moved out?

Mr. SLOAN. Did I know at any time on the 22nd that they were going to be moved out?

Mr. CHERTOFF. Yes.

Mr. SLOAN. Well, there's the—I'm trying to think about that to make sure I give you my best recollection. There's the line in my notes which you've pointed to which would certainly possibly indicate that. "Get Maggie, go through office, get HRC/WJC stuff."

Mr. CHERTOFF. I'm sorry. Finish up.

Mr. SLOAN. Beyond that there is nothing that comes to mind right as I sit here right now about having knowledge of their personal documents being moved out. There is nothing that comes to mind as I sit here.

Mr. CHERTOFF. Since there was a lot of concern about following the law here and privileges, did anybody ask you to look at the question of whether if there were official documents of the Presidency they ought to be moved over to a private lawyer's office?

Mr. SLOAN. I'm sorry. I didn't catch the question.

Mr. CHERTOFF. Did anybody ask you that day to look into the question of whether official documents could be moved to a private lawyer's office?

Mr. SLOAN. No, I don't recall that question coming up.

Mr. CHERTOFF. No one asked you, Mr. Sloan, to call Williams & Connolly and make arrangements to have personal documents picked up; right?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. You know how to find their number in the phone directory?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. Mr. Neuwirth, no one asked you to contact Williams & Connolly to arrange to have these personal documents taken over to that law firm?

Mr. NEUWIRTH. No, they did not.

Mr. CHERTOFF. You will agree with me that as to any attorney-client privilege on personal documents between the Clintons and their lawyers, Maggie Williams is not someone who is embraced within that privilege; right, Mr. Sloan?

Mr. SLOAN. I believe that's correct if it's purely personal, but I do want to emphasize there is this area of what I call personal/official where there's a gray area. If you are talking about purely personal and it's clearly no intersection with official functions, that sounds right to me.

Mr. CHERTOFF. Like back tax returns, for example. If there were notes about back tax returns and back financial transactions before the Presidency, that would probably be, if it was covered by any privilege, covered by the personal attorney-client privilege; right?

Mr. SLOAN. Not necessarily. Let me make clear this isn't a thought process I went through at the time, but in answer to your question I could see—I mean, certainly the preparation of the

President's tax returns in a particular year is something that I would think of as at the intersection of personal or official, or at least the release of the tax return. I know there's a briefing by the White House when the President's tax return is released, and a tax return in a particular year might require reference to prior files and prior tax returns.

Mr. CHERTOFF. Well, we'll come back to that. Was there a point in time that afternoon—I want to be quite clear on this because you know we've had testimony from Mr. Spafford, Mr. Sloan, was there a point in time that afternoon that you picked up the briefcase that belonged to Vincent Foster and held it open and looked into it?

Mr. SLOAN. I have absolutely no recollection of doing that, Mr. Chertoff.

Mr. CHERTOFF. Is that something that you would recall if it happened?

Mr. SLOAN. I believe that I would recall it because I believe that I would have recalled it the following week when the subject of the briefcase became an issue.

Mr. CHERTOFF. So you are saying it didn't happen?

Mr. SLOAN. I'm saying that I have absolutely no recollection of it happening, and I believe that I would recall if it happened. As far as I'm concerned, it did not happen because I have no recollection of it and I think I would recall it if it did.

Mr. CHERTOFF. You made a reference in your answer to the fact that the following week you were actually interviewed by the FBI about this; right?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. There was an obstruction of justice investigation?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. By the way, do you know anybody who complained to Nancy McFadden at the Justice Department about the way the FBI was handling that investigation?

Mr. SLOAN. No.

Mr. CHERTOFF. You were interviewed by the FBI in that investigation?

Mr. SLOAN. Yes.

Mr. CHERTOFF. Agent Salter?

Mr. SLOAN. Yes. Just to be clear, I don't know if it was identified as an obstruction of justice investigation at the time, but I knew it was an investigation into the circumstances.

Mr. CHERTOFF. I want to be quite clear, I think we've given you a copy of the 302 report of the interview with you. It's FBI 37. In that paragraph the agent records that you recall that after the briefcase was emptied and the contents reviewed, the empty briefcase was placed on the floor at the spot where you were standing; it says, "He, Sloan, was standing. However, Sloan did not notice if there were any items remaining in the briefcase because he did not look after every detail."

That is what you told the agent within 2 weeks after the event; right?

Mr. SLOAN. Mr. Chertoff, let me be as clear as I can about my recollection, and I have to draw a distinction between my current recollection and my contemporaneous recollection so that I can be

clear. As I sit here today, I have very little recollection of the incident of Mr. Nussbaum reviewing the briefcase in the course of the review.

Around this time I made some contemporaneous notes, after the time of my FBI interview, which I believe reflect my best contemporaneous knowledge both of the events that took place in Mr. Foster's office with respect to the briefcase and of the subject of my discussions with the FBI.

Mr. CHERTOFF. In other words, after you were interviewed by the FBI you went up and wrote up your own memo of what you said to the FBI; right?

Mr. SLOAN. That's correct. The memo, it reflected both what I said to the FBI and what my recollection of the events were. It was clear at that time that this was an event that was receiving a lot of attention.

Mr. CHERTOFF. It was important to the FBI?

Mr. SLOAN. It was important to the FBI, it was important to the White House, and it was a matter of concern.

Mr. CHERTOFF. They pressed you on this issue of when the note had been seen or when the paper, torn-up paper had been seen; right?

Mr. SLOAN. That's my understanding, yes, sir.

Mr. CHERTOFF. The FBI agents expressed skepticism and doubt about the fact that it had not been seen on the 22nd; right?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. At that time, you told them that you had not looked into the briefcase; right?

Mr. SLOAN. Actually, Mr. Chertoff, my notes of what I told the FBI reflect that I could not recall whether I had looked in the briefcase or not, but that my understanding was that the briefcase was empty because it was a personal effect which could have gone to the Foster's personal lawyer.

Mr. CHERTOFF. So you told the FBI within 2 weeks after the event that you had not seen pieces of paper in the bottom of the briefcase; right?

Mr. SLOAN. Yes, that's right.

Mr. CHERTOFF. That's what you told them within 2 weeks after the event; right?

Mr. SLOAN. Yes. I mean, my best recollection is contained in my notes, but that's right, I told them that I did not know that there were scraps of paper in the briefcase.

Mr. CHERTOFF. So that was the position you took with them at that time; right?

Mr. SLOAN. That's the position that I took because that's been my recollection since the events. I remember quite clearly when I learned about the scraps of paper for the first time.

Mr. CHERTOFF. You disagree with Mr. Spafford's recollection; right?

Mr. SLOAN. That's correct.

Mr. CHERTOFF. You say you actually learned about the scraps of paper on July 27; correct?

Mr. SLOAN. That's my recollection, yes, sir.

Mr. CHERTOFF. Are you telling us you were not in the White House Counsel's suite on the day before Monday, July 26, when Mr. Neuwirth discovered paper in the briefcase?

Mr. SLOAN. On July 26, I don't know whether I was in the Counsel's suite. I know that I was not involved at all in the discovery of the paper and piecing it together and that I didn't know anything about the scraps of paper or the note until I was told about it on the night of July 27, after the scraps of paper had been turned over to the authorities.

Mr. CHERTOFF. Do you know Linda Tripp?

Mr. SLOAN. Yes, I do.

Mr. CHERTOFF. She was an executive assistant or secretary in the suite?

Mr. SLOAN. Yes.

Mr. CHERTOFF. So Monday, July 26, did you ask her if she could get you a typewriter to take into Mr. Nussbaum's office?

Mr. SLOAN. I have no recollection of that, sir.

Mr. CHERTOFF. Well, when you say—I want to be careful because sometimes people don't recall one way or the other. Sometimes when they say they don't recall it means that it did not happen. Which one are we in here? Is it you don't remember or it did not happen?

Mr. SLOAN. Mr. Chertoff, I have no recollection. To the best of my knowledge it did not happen. Let me say this. I did not see Ms. Tripp's testimony. I know a little bit about it, and to the extent that that was connected with somehow knowledge of the scraps of paper and putting together the note at that time, it did not happen.

Mr. CHERTOFF. You did not ask to take a typewriter into Mr. Nussbaum's office on the night that the note was discovered by Mr. Neuwirth through this, through the briefcase falling over on that Monday, the 26th; you did not take a typewriter, you did not want to take a typewriter in there?

Mr. SLOAN. I have no recollection of that. Let me just be clear. I am not trying to cut it too finely when I say I have no recollection. I have heard of this for the first time after Ms. Tripp's testimony and I am positive I did not know anything about the scraps of paper or putting the pieces of paper together. I have absolutely no recollection of asking for a typewriter. But I have tried to think is it conceivable that somehow Mr. Nussbaum said to me can you see if we can get a typewriter. I did not know it was connected to pieces of paper or anything like that. That's the only possible explanation that can come to mind. But I have absolutely no recollection and I am positive that I had nothing to do with the note, did not know of the note or the pieces of paper on Monday, July 26, absolutely positive.

Mr. CHERTOFF. So you are not rejecting or disagreeing with the possibility that Ms. Tripp is correct that, in fact, on that night you did ask her for a typewriter?

Mr. SLOAN. Well, I have no recollection of it. But I guess what I am trying to be very clear about, Mr. Chertoff, is that if Mr. Nussbaum asked me can you see if you can get a typewriter, that might not stand out in my mind. I cannot absolutely exclude that possibility.

If Mr. Nussbaum had told—may I finish my answer, please. If Mr. Nussbaum had said to me here are these scraps of paper, my God, we need a typewriter. I would remember being told about the scraps of paper and I am positive that I was not told about the scraps of paper. I have no recollection at all of the typewriter, either. I want to be clear about that.

Mr. CHERTOFF. You guys had PC's out in the outer suite; is that right?

Mr. SLOAN. Yes.

Mr. CHERTOFF. Can you think of any reason why you would have to locate a typewriter, a portable typewriter, to bring it behind closed doors in Mr. Nussbaum's office at night?

Mr. SLOAN. No. Frankly, I think Ms. Tripp is mistaken, but I am trying to be as complete as I can be in separating out my recollections and what possibilities I think I can absolutely preclude. But basically I think that she is mistaken about something because I have no recollection of a typewriter and I know that I was not involved at all with the scraps of paper or the note on Monday, July 26.

Mr. CHERTOFF. Now, Mr. Neuwirth, you were in Mr. Nussbaum's office on the 26th. Do you remember the typewriter incident?

Mr. NEUWIRTH. No, I do not.

Mr. CHERTOFF. It didn't happen?

Mr. NEUWIRTH. I don't think it happened.

Mr. CHERTOFF. So Ms. Tripp is wrong about that? That's your testimony?

Mr. NEUWIRTH. I don't know what Ms. Tripp's note was based on, so I'm not in a position to say whether she was right or wrong.

Mr. CHERTOFF. It's not a question of her note; it's a question of her sworn testimony; you understand that?

Mr. NEUWIRTH. I don't know what was the basis of her testimony.

Mr. CHERTOFF. You remember on that night when you opened up the briefcase——

The CHAIRMAN. I am going to ask Counsel because I know that you have some more to develop, and the red light has gone off. We are going to try to hold as closely as we can, so rather you develop that——

Mr. CHERTOFF. I have two questions.

The CHAIRMAN. All right. Two questions. Go ahead.

Mr. CHERTOFF. I just want to focus on this night, on the 26th. There were a number of people that you summoned or had—or people who were summoned into that office, Mr. Nussbaum's office, on the 26th when you were there putting together the note that came out of the briefcase; right?

Mr. NEUWIRTH. After we put the note together, several people were contacted, yes.

Mr. CHERTOFF. One of those was the First Lady?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. When you were interviewed by the Park Police after the event—and, in fact, you and Mr. Nussbaum were in the same room during the interview; right?

Mr. NEUWIRTH. I have looked at a document which suggests that is the case and I do not have any reason to think that is not the case.

Mr. CHERTOFF. Did you tell the Park Police that, you know, Mr. Burton had been contacted to view the document, Thomas McLarty had been contacted to view the document, Mr. Nussbaum reviewed the document, Lisa Foster had reviewed the document, but you never mentioned the First Lady to the Park Police?

Mr. NEUWIRTH. I don't know whether I mentioned it. I don't know whether Mr. Nussbaum mentioned it.

Mr. CHERTOFF. It's not in the report, is it?

Mr. NEUWIRTH. I haven't seen the report or looked at it right now. I can look at it.

Mr. CHERTOFF. Do you remember mentioning it?

Mr. NEUWIRTH. I don't know whether I mentioned it or not.

Mr. CHERTOFF. What about the FBI—FBI where—it's FBI 19. Do you remember being interviewed by the FBI as part of that same investigation Mr. Sloan was interviewed about?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. The FBI was asking questions about everything that happened on that night when the note was revealed, when you pieced it together out of the briefcase; you remember that?

Mr. NEUWIRTH. I remember being asked questions. I remember being conscious of the fact that when they asked me questions about what happened on that night, I had not been asked questions that would have covered the period when the First Lady was present, but I went out of my way at the conclusion of the interview to tell them—when they asked me who else I knew had been told about the note, I went out of my way to point out that the First Lady was one of the people that I knew had been made aware of the note prior to the time that I understood it had been given to law enforcement officials. I'm very conscious of the fact that I made that effort precisely because I didn't think I had been asked a question earlier in which there would have been an opportunity to talk about the fact that the First Lady had come to look at it that night.

Mr. CHERTOFF. Well, two more questions. Did you tell them that she had actually come in to look at it that night?

Mr. NEUWIRTH. What I said was that—I went out of my way to mention that the First Lady was one of the people that I knew had been made aware of the fact that the note had been found, and I was not asked any further questions about that.

Mr. CHERTOFF. Made aware is a somewhat different characterization than came in and had an opportunity to look at it, isn't it?

Mr. NEUWIRTH. I think that's correct.

Mr. CHERTOFF. So you decided you were going to use the "made aware" version, right, in talking to the FBI?

Mr. NEUWIRTH. No. I was not—I went—when I was asked a question about who was aware of the note, I pointed out, and I think that I went out of my way and was conscious of the fact that I was going out of my way to mention the fact that the First Lady was one of the people that I knew had been made aware of the note, and I was not asked any follow-up questions about it at that time.

Mr. CHERTOFF. Would it surprise you to learn that there is no mention of the First Lady in the FBI report, FBI 18 through 20?

Mr. NEUWIRTH. I don't know how the report was put together, whether it was based on notes, and so I'm not in a position to be surprised or not.

Mr. CHERTOFF. Did you tell the FBI that Mr. Burton had been brought in, that Mr. McLarty had been called, that Mr. Nussbaum was in the room?

Mr. NEUWIRTH. I answered every question that was asked of me as best as I could.

Mr. CHERTOFF. Did you tell them the First Lady was in the room with the note on July 26, 1993?

Mr. NEUWIRTH. I don't believe that I told them that because I don't believe I was asked a question to which that would have been responsive. I was very conscious of that fact and that's why I went out of my way at the conclusion of the interview to mention the fact that I was aware that the First Lady had been made aware of the existence of the note.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Sloan, I would like to just pursue this line of inquiry about when you learned about the note. As I understand it, you learned about it after the note had been—well, why don't you tell me when you learned about the note?

Mr. SLOAN. The night of July 27, 1993.

Senator SARBANES. At what point?

Mr. SLOAN. My recollection is that I was told by Mr. Nussbaum and Mr. Neuwirth in Mr. Nussbaum's office and the note, at that point, had been turned over to authorities. I was told that Steve had found these scraps of paper, that they had fluttered out as he was putting the briefcase into a box of Foster personal effects, and he had pieced them together. They told me what the note said at that point.

Senator SARBANES. This would have been late in the evening of the 27th?

Mr. SLOAN. Yes, that's right. I would think around 9 p.m. or 10 p.m. at night, yes, sir.

Senator SARBANES. That was after the Park Police were called over and I guess met with the Deputy Attorney General and the note was turned over to the Park Police; is that correct?

Mr. SLOAN. That's right. I don't know if I knew all the details of whom it had been turned over to, but I did know it had been turned over to authorities at that time and I believe I knew that the people from the Justice Department had been there.

Senator SARBANES. That was in a conversation with Mr. Nussbaum and Mr. Neuwirth?

Mr. SLOAN. As I recall, that's correct.

Senator SARBANES. You recall that conversation, Mr. Neuwirth?

Mr. NEUWIRTH. I was turning when you asked. I would appreciate it if you could tell me again what conversation you are referring to.

Senator SARBANES. The conversation on the night of the 27th when Mr. Sloan first learned about the note, which apparently took place—where did it take place—in the White House Counsel's Office?

Mr. SLOAN. Yes, my recollection is that it was in Mr. Nussbaum's office.

Senator SARBANES. It was you, Mr. Nussbaum, and Mr. Neuwirth and you were then told about the note; is that right?

Mr. SLOAN. That's correct. That's correct, yes, sir.

Senator SARBANES. Do you recall that conversation?

Mr. NEUWIRTH. Yes, Senator, I do recall a conversation in which Mr. Sloan was advised that night about the note having been found, but I'm not sure whether Mr. Nussbaum was present. I certainly recall a conversation which I told him about that.

Senator SARBANES. In which you told him about that?

Mr. NEUWIRTH. That's correct.

Senator SARBANES. Was that news to Mr. Sloan?

Mr. NEUWIRTH. It seemed to me that this was the first time he had heard anything about a note.

Senator SARBANES. The first time he had heard about it?

Mr. NEUWIRTH. Right.

Senator SARBANES. So, Mr. Sloan, your recollection is that what Mr. Spafford has testified to, you don't recall that happening?

Mr. SLOAN. I don't recall it. Senator Sarbanes, I have to say I believe that I would have recalled it when I learned of the note. I mean, that's the thing that is so mystifying to me, because if it had happened the way that Mr. Spafford described, I can't imagine why when I heard, as I recall, from Mr. Nussbaum and Mr. Neuwirth, I would have said those are the scraps of paper that were in the bottom of the briefcase. I had no recollection of that. I had no reaction like that. It was all news to me about scraps of paper and the note being pieced together. This was all news to me at that point and that's why I say I think I would recall it. Because I think that on learning that news I would have recalled it.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, gentlemen. I guess it's past noon by now. So good afternoon. We've been jumping around quite a bit in this chronology up to this point, so I would like to try to get back to the beginning of this story in terms of when you learned, for example, that the Park Police were the investigative agency that was looking into Mr. Foster's suicide. Mr. Neuwirth, when did you learn that?

Mr. NEUWIRTH. The morning after Mr. Foster's death I learned that Mr. Nussbaum was going to be attending a meeting in the White House with representatives of the Park Police, and at that time I understood that they were involved in the investigation of his death. It's possible that I heard something about that prior to that point, but certainly I was very aware at that point, which was sometime on the morning, the day after.

Mr. BEN-VENISTE. Mr. Sloan, did you learn about the Park Police's interest in this investigation at about that time as well?

Mr. SLOAN. Yes, the morning of July 21.

Mr. BEN-VENISTE. Right. Now, did either of you attend the briefing that was conducted at the White House by Chief Langston and Major Hines?

Mr. SLOAN. No, sir.

Mr. NEUWIRTH. No, I did not.

Mr. BEN-VENISTE. Did you speak with Mr. Nussbaum after the briefing?

Mr. SLOAN. Do you mean about the subject of the briefing or just——

Mr. BEN-VENISTE. Yes.

Mr. SLOAN. Not that I recall, but it's possible. That's just one—I don't recall him talking about the briefing.

Mr. BEN-VENISTE. Mr. Neuwirth.

Mr. NEUWIRTH. I don't recall having a discussion that morning, because I think very shortly after the briefing the President came to the Counsel's Office to meet with members of the Counsel's Office staff, and shortly after that there was a meeting in one of the large rooms in the Old Executive Office Building at which the President and Mr. Nussbaum addressed the White House staff.

Mr. BEN-VENISTE. Approximately what time was that?

Mr. NEUWIRTH. It was either very late in the morning or very early in the afternoon that day.

Mr. BEN-VENISTE. So from the point that the Park Police briefed the senior staff concerning what had been discovered up to this point and the time that the President addressed the staff, Mr. Nussbaum, to your knowledge, was pretty much tied up with those details; is that correct?

Mr. NEUWIRTH. Well, it's always been difficult for me to reconstruct the exact chronology, but I think that generally after—once the President came and the assembly took place, that was the focus of our attention.

Mr. BEN-VENISTE. All right. Let me put it a different way. When for the first time did you learn that someone was interested in the contents of Mr. Foster's office in either a general or a specific way, Mr. Neuwirth?

Mr. NEUWIRTH. You say "someone." Do you mean anyone or——

Mr. BEN-VENISTE. Some authority, Mr. Neuwirth?

Mr. NEUWIRTH. I think I became aware sometime on the 21st that there was an interest in the contents of Mr. Foster's office, and it's—I believe that at some point during the late afternoon of the 21st that there was actually a meeting with representatives of the Justice Department and the Park Police to talk about that issue.

Mr. BEN-VENISTE. Before the meeting with the Justice Department and the Park Police, did you have a conversation among yourselves in the Counsel's Office about the fact that some request was being made, Mr. Sloan?

Mr. SLOAN. Yes.

Mr. BEN-VENISTE. When do you recall that having occurred?

Mr. SLOAN. I recall that as before Mr. Nussbaum left for the briefing with the Park Police.

Mr. BEN-VENISTE. What about you, Mr. Neuwirth?

Mr. NEUWIRTH. I assume there had to have been a discussion before the meeting. I am not sure at what point during the day it

took place. My best sense is it would have taken place sometime in the afternoon.

Mr. BEN-VENISTE. Is it fair to say at some point you discussed what in your view in the Counsel's Office was going to be an appropriate procedure to accommodate the interests of the police, Mr. Sloan?

Mr. SLOAN. You know, I don't recall the discussion. If you mean a procedure in terms of reviewing documents, as I was indicating earlier, I don't recall that discussion in that period. I have a general recollection that there were preliminaries before the issue got resolved the next day, but as I sit here, I don't have a clear recollection of what——

Mr. BEN-VENISTE. Mr. Neuwirth, do you recall any such discussions before you sat down and met with the police and the Justice Department?

Mr. NEUWIRTH. I don't remember the exact chronology. Every conversation I participated in about the materials in Mr. Foster's office concerned how best to accommodate, on the one hand, the interests of the Park Police and other law enforcement officials to investigate Mr. Foster's death; and, on the other hand, the privileges that could attach to materials in Mr. Foster's office.

Mr. BEN-VENISTE. Who participated in the meeting with the Park Police and the Justice Department officials?

Mr. NEUWIRTH. I know that I participated and that Mr. Nussbaum participated. And I think Mr. Sloan participated. I recall the Justice Department being represented by David Margolis and Mr. Adams and there may also have been Park Police officials in the meeting.

Mr. BEN-VENISTE. Does that comport with your recollection, Mr. Sloan?

Mr. SLOAN. Yes, it does.

Mr. BEN-VENISTE. Now, had you worked out in your own minds what your recommendation was going to be to the authorities in terms of how this search or review for materials would be conducted?

Mr. NEUWIRTH. I think that at this point in the process Mr. Nussbaum was aware that he had a very difficult issue to resolve because of the nature of the competing interests, and trying to fashion an accommodation of those interests was something that he wanted to do in the best way possible under the circumstances.

I don't believe that there was any final decision made prior or during the meeting about——

Mr. BEN-VENISTE. Well, we'll get to——

Mr. NEUWIRTH. —how that would take place.

Mr. BEN-VENISTE. During or after—let's start with the prior. It's your recollection that you did not come to the meeting with a fixed position to report to the individuals representing the Park Police and the Justice Department——

Mr. NEUWIRTH. I think the only——

Mr. BEN-VENISTE. —is that so?

Mr. NEUWIRTH. —I think the only conclusion that had been reached prior to the meeting was that if you were to provide unrestricted access for law enforcement officials to the materials in Mr. Foster's office, there could be a waiver of any privileges that might

attach to the materials there. Mr. Nussbaum, I think, wanted to try to fashion an appropriate review process that would not, or at least minimize the possibility of such a waiver.

Mr. BEN-VENISTE. Mr. Sloan, do you recall that as having been a part of the discussion before the meeting?

Mr. SLOAN. I'm sorry. A part of the discussion before the meeting with the——

Mr. BEN-VENISTE. Among yourselves before the meeting?

Mr. SLOAN. As I indicated, Mr. Ben-Veniste, I just have a general recollection of some preliminaries before the issue got resolved on the morning of the 22nd.

Mr. BEN-VENISTE. How long did the meeting take place? How long did the meeting last?

Mr. NEUWIRTH. I'm not sure.

Mr. BEN-VENISTE. Mr. Sloan, do you have some idea?

Mr. SLOAN. A rough estimate would be 30 minutes, 60 minutes, but it's very rough.

Mr. BEN-VENISTE. Did Mr. Nussbaum report any conversation he had with Mr. Heymann either before or after the meeting with the individuals you've mentioned on the 21st, Mr. Sloan?

Mr. SLOAN. Not that I recall. One thing—I just want to make sure the record is clear. I don't remember the meeting with the law enforcement people on the afternoon of the 21st as being solely directed toward procedures. There were a number of issues that were——

Mr. BEN-VENISTE. What were the other issues?

Mr. SLOAN. I remember that Mr. Nussbaum related that the office had been sealed that morning at about 10 a.m. I remember that we told them that Mr. Nussbaum had gone in to get a kindergarten picture and brought it out and that was the only access to the office since the office had been sealed.

I remember we told them that there was a bag of trash that was in Deputy Chief of Staff Roy Neel's office and that we were planning to—and that we thought we should put the bag of trash in Mr. Foster's office and they agreed that was appropriate. I remember there was a request to try to get Mr.—the personal effects that had been on Mr. Foster's body or in his car at the time of his death, if the Park Police were done reviewing them, so that the President could bring those to Mrs. Foster that night.

I remember a variety of subjects coming up in that discussion.

Mr. BEN-VENISTE. All right. So on the issue of whether you recall Mr. Nussbaum reporting on a conversation with Mr. Heymann, neither of you has a specific recollection of that?

Mr. SLOAN. That's correct as to myself.

Mr. NEUWIRTH. I know that Mr. Nussbaum had conversations with Mr. Heymann that I believe occurred on the 21st and 22nd. I can't tell you exactly when they occurred.

Mr. BEN-VENISTE. Did he report to you the content of the conversation?

Mr. NEUWIRTH. I don't think that he told me anything other than the fact that he had spoken to Mr. Heymann. I understood that the views of——

Mr. BEN-VENISTE. That's a no?

Mr. NEUWIRTH. Yes.

Mr. BEN-VENISTE. Thank you.

With respect to the procedures that were discussed, do you recall what position the Park Police took in terms of what they were interested in looking for, Mr. Sloan?

Mr. SLOAN. What I recall—by the time of the procedure on the 22nd, the purpose of the review was for a suicide note or an extortion note, and I can't tell you exactly when I first got that understanding, but that was my understanding at the time of the review.

Mr. BEN-VENISTE. OK. Did Mr. Nussbaum put forward a concept of how the review would take place, Mr. Sloan?

Mr. SLOAN. I don't recall him doing it on the 21st.

Mr. BEN-VENISTE. Did the Justice Department lawyers put forward a view of what they had in mind?

Mr. SLOAN. I don't recall those discussions on the 21st. As I mentioned, I have a general vague recollection of preliminaries. My memory is clear when the issue got resolved and there were discussions at that point.

Mr. BEN-VENISTE. That's the following day?

Mr. SLOAN. Yes, sir.

Mr. BEN-VENISTE. Mr. Neuwirth?

Mr. NEUWIRTH. I believe, if I recall correctly that this discussion was on the 21st, that Mr. Nussbaum indicated that one of the ways that an accommodation could be reached that would not undermine the privileges or cause a waiver of the privileges would be for Mr. Nussbaum to be the person who would review the contents of the documents and describe them to law enforcement officials.

I think that from the first time we discussed this, Mr. Margolis expressed a different view. I think that Mr. Margolis recognized that there was a need to accommodate the concerns I talked about earlier. I think that Mr. Margolis suggested that it would be in the best interest of the White House to let Mr. Margolis play the type of role that Mr. Nussbaum suggested that he himself should play in the review.

Mr. BEN-VENISTE. Was that expressed on the 21st, to your recollection?

Mr. NEUWIRTH. It's my best recollection that that was expressed in every meeting we had with Mr. Margolis on the subject.

Mr. BEN-VENISTE. To the best of your recollection, what was Mr. Nussbaum's response to that on the 21st?

Mr. NEUWIRTH. He didn't agree that that was a procedure that necessarily could work because having the Justice Department play that role could cause the very type of waiver that the accommodation was meant to avoid.

Mr. BEN-VENISTE. To the best of your recollection, how was the matter left then on the 21st?

Mr. NEUWIRTH. It was left without resolution with the understanding that there would be further discussion about it.

Mr. BEN-VENISTE. Mr. Sloan.

Mr. SLOAN. I don't recall a clear resolution on the 21st, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Now, let me go to an issue that was raised earlier.

Senator SARBANES. Can I ask, Mr. Sloan, when you say you don't recall a clear resolution, you mean your recollection is it was not resolved or you don't have a recollection?

Mr. SLOAN. What I recall is that there were preliminary discussions on the 21st, and I don't recall there being a resolution. It stands out in my mind as being preliminary to the resolution on the 22nd. I don't remember a kind of agreement and a change in agreement if that's the thrust of your question.

Mr. BEN-VENISTE. All right. Let me now go ahead to the following week.

Senator DODD. Could I just, Mr. Ben-Veniste, a point on response to that last question. Regarding those conversations between Mr. Margolis and Mr. Nussbaum, was there ever the implication by Mr. Margolis that what Mr. Nussbaum wanted to do was not legally right or was it a question of how it would look? Are we dealing with perceptions here, political perceptions, or was Mr. Margolis insisting that there was some potential violation of the law or some illegality associated with the way in which Mr. Nussbaum desired to review the documents?

Mr. NEUWIRTH. I only remember Mr. Margolis saying repeatedly that he thought it would be in the best interest of the White House to use the procedure he was proposing. I never heard him suggest that what Mr. Nussbaum was proposing was illegal in any way.

Senator DODD. In your interpretation, what you are getting from Mr. Margolis is political advice from the Justice Department to the White House more than a legal determination?

Mr. NEUWIRTH. I don't think I'm in a position to characterize what Mr. Margolis was thinking when he said what he said, but I do recall that was his position.

Senator DODD. At any point did he say this is—you're potentially violating the law here, you are doing something that's wrong? Did he ever say that?

Mr. NEUWIRTH. No, he did not.

Senator SARBANES. Did you think——

Senator DODD. Mr. Sloan, would you comment on that?

Mr. SLOAN. I don't recall him ever saying anything like that, Senator Dodd, and I think that I would recall such a statement. I don't recall anything like that.

Senator DODD. Is it your impression that it was more a question of political advice from the Justice Department to the White House rather than some legal requirements?

Mr. SLOAN. I don't recall the substance of the discussions, quite frankly, on the 21st so I'm not in a position to characterize. But I certainly don't remember any discussion that would be against the law or something like that.

Senator DODD. OK. Thank you.

Mr. BEN-VENISTE. Mr. Neuwirth, I'm going to come back to the question of the conduct of the search and the conversations that preceded that on the 22nd. But I do want to cover this question that was raised about what happened on the 26th after the note in its, I guess, 28 pieces we now know, was discovered.

You were the person who discovered it, Mr. Neuwirth; is that correct?

Mr. NEUWIRTH. That's correct.

Mr. BEN-VENISTE. Now, to the best of your knowledge, Mr. Neuwirth, had anyone in the White House discovered that those scraps of paper were meaningful prior to the time that you discovered them on the 26th of July, 1993?

Mr. NEUWIRTH. I don't know, but certainly I never heard that.

Mr. BEN-VENISTE. You never heard from any source that anyone had discovered that these pieces of paper that were in the briefcase at the time you saw them had been identified as a note or a writing of Mr. Foster's prior to the moment that you discovered them?

Mr. NEUWIRTH. That's correct.

Mr. BEN-VENISTE. What were the circumstances under which you discovered these scraps of paper in the bottom of the briefcase?

Mr. NEUWIRTH. On Monday the 26th at Mr. Nussbaum's request I was preparing an inventory of the contents of Mr. Foster's office. One of the things that I did in connection with that inventory was to put into a box toward the latter part of my inventory process items that belonged to Mr. Foster personally, like photographs. In the process of putting materials in that box I saw the brief bag leaning against the back wall of Mr. Foster's office. I understood it to be empty. I knew that it belonged to Mr. Foster. I picked it up and brought it to put into the box. I had laid two large—one or two or maybe even three large black and white photographs of Mr. Foster and his daughter with the President on the top of the box. In an effort to avoid damaging those photographs, I turned the briefcase to fit it or the brief bag to fit it into the box, and in the process of turning it, scraps of paper fell out of the brief bag.

Mr. BEN-VENISTE. You turned it in a way that the mouth of the briefcase was facing to the floor? How did you turn it? Make a gesture of what you did.

Mr. NEUWIRTH. All I know is that I turned the brief bag enough for pieces of paper to fall out of it.

Mr. BEN-VENISTE. Where did they fall?

Mr. NEUWIRTH. They either fell into the box or onto the floor.

Mr. BEN-VENISTE. What did you see?

Mr. NEUWIRTH. I saw pieces of paper, and I saw, after I picked them up, that there was handwriting on them that looked like Mr. Foster's handwriting, with which I was familiar.

Mr. BEN-VENISTE. What did you do next?

Mr. NEUWIRTH. At that point I looked in the bag to see if there were other scraps of paper because only a few had fallen out, and I saw that there were more scraps of paper at the bottom of the bag. I had to stick my hand into the bag to scoop many of them out, and I took the pieces of paper—and I may have also taken the brief bag—into Mr. Nussbaum's adjacent office within the Counsel's Office suite because there was a conference table in that office, and I began to put the pieces of paper together on the conference table.

Mr. BEN-VENISTE. Up to the point that the papers fell out, you had handled the briefcase; correct?

Mr. NEUWIRTH. The only time I handled the briefcase was when I picked it up to put it into the box.

Mr. BEN-VENISTE. At that moment when you turned it to the side—could you turn it to the side immediately?

Mr. NEUWIRTH. I had to take the bag from where it was laying against the back wall of Mr. Foster's office and walk it over to the box that I think was closer to the coffee table in Mr. Foster's office at the time.

Mr. BEN-VENISTE. As the briefcase was sitting there against the wall, could you see into it?

Mr. NEUWIRTH. I did not see into it.

Mr. BEN-VENISTE. Did you notice whether the briefcase mouth was open as it was sitting there against the wall? We have seen the briefcase and the briefcase does not have any flap over the top or any method of closing it at the top. Could you see into it?

Mr. NEUWIRTH. I don't know whether it was possible for me to see into it. I certainly didn't see into it or look into it.

Mr. BEN-VENISTE. OK. So then the time that you discovered it was after you had placed it in the box and tilted it sideways and the scraps fell out?

Mr. NEUWIRTH. It was as I was turning it to place it into the box.

Mr. BEN-VENISTE. Who was in Mr. Nussbaum's office when you went in there with the briefcase and the scraps of paper?

Mr. NEUWIRTH. When I first went in, Mr. Nussbaum's personal office was empty.

Mr. BEN-VENISTE. And you continued to attempt to assemble the pieces?

Mr. NEUWIRTH. I think that as soon as I realized that what I was putting together looked like a piece of paper with Mr. Foster's handwriting I stopped and stepped out into the area where the staff assistants sat and asked for Mr. Nussbaum either to be called or paged or somehow brought back to his office.

Mr. BEN-VENISTE. How long did it take for Mr. Nussbaum to arrive back in his office?

Mr. NEUWIRTH. I know that he came back very quickly. I don't know the exact period of time.

Mr. BEN-VENISTE. What did you say to him?

Mr. NEUWIRTH. I told him that I had found these scraps of paper in the brief bag and that they looked like they fit together into one piece of paper.

Mr. BEN-VENISTE. What happened next?

Mr. NEUWIRTH. Mr. Nussbaum sat at the conference table with me and helped me finish putting together the pieces of paper into a note.

Mr. BEN-VENISTE. Once you read the note what did you say to Mr. Nussbaum and what did he say to you?

Mr. NEUWIRTH. I think that almost immediately after having put the note together Mr. Nussbaum said that he was going to go downstairs to notify Mack McLarty, the Chief of Staff.

Mr. BEN-VENISTE. Did you say anything about the fact that you had not—"you" meaning the collective group of attorneys who had up to this point been involved in attending the search and going through Mr. Foster's office—that you had not discovered the note to this point?

Mr. NEUWIRTH. I don't think we had a discussion about that.

Mr. BEN-VENISTE. Was there any reaction to the fact that this—whether it was by way of discussion or otherwise, that these scraps of paper had to this point eluded your attention?

Mr. NEUWIRTH. I was very conscious of the fact that they had eluded my attention and that I had found them.

Mr. BEN-VENISTE. You did not make any remark to Mr. Nussbaum, nor he to you?

Mr. NEUWIRTH. I was focused on putting the note together and I think that, as I said, almost immediately upon completing putting it together and figuring out that it had text that could be read, Mr. Nussbaum said he wanted to get Mr. McLarty.

Mr. BEN-VENISTE. At some point you attempted to transcribe or you did transcribe the contents of the note; is that correct?

Mr. NEUWIRTH. Mr. Nussbaum transcribed it.

Mr. BEN-VENISTE. When was that?

Mr. NEUWIRTH. I think that it was either just before or just after he came back from going to the Chief of Staff's Office and he came back with Bill Burton who worked for Mr. McLarty and he told me that Mr. McLarty, he had learned, was traveling with the President in Chicago.

Mr. BEN-VENISTE. Who transcribed the contents?

Mr. NEUWIRTH. Mr. Nussbaum.

Mr. BEN-VENISTE. Was there an attempt to type them out?

Mr. NEUWIRTH. I don't believe that there was.

Mr. BEN-VENISTE. All this big mystery about getting a typewriter and bringing it in there, you have no knowledge of that?

Mr. NEUWIRTH. I don't think anybody attempted to type out the note. I know that Mr. Nussbaum wrote it out.

Mr. BEN-VENISTE. The note obviously was in handwriting, Mr. Foster's handwriting you presumed at that time?

Mr. NEUWIRTH. Yes, the note I had found.

Mr. BEN-VENISTE. Now, at some point, according to the testimony we have developed in the depositions that lead to this hearing, it appears that someone raised an issue about whether this note would somehow be protected by executive privilege. Do you recall that was discussed?

Mr. NEUWIRTH. I don't recall a discussion about executive privilege. I do recall having a discussion, I think, that included Mr. Burton, who I mentioned earlier, and Mr. Nussbaum, in which I think Mr. Burton raised the question of whether the fact that Mr. Foster was talking about matters on which he had worked in a note that was undated and made no reference to suicide, whether the contents of the note might be covered by attorney-client privilege.

Mr. BEN-VENISTE. Attorney-client?

Mr. NEUWIRTH. Or attorney work product privilege.

Mr. BEN-VENISTE. Did anyone give serious consideration to the notion that this note ought not be produced to law enforcement authorities because of some privilege?

Mr. NEUWIRTH. Nobody did in my presence.

Mr. BEN-VENISTE. Did you?

Mr. NEUWIRTH. No, I did not.

Mr. BEN-VENISTE. I see that my time is up, Mr. Chairman.

The CHAIRMAN. Let me say that I am going to turn to Senator Murkowski for a moment, and he is going to, I think, refer to the bag—and I think it is described as a briefcase rather than a brief bag by Mr. Neuwirth. Not to be sensational, but there's a lot of

questions about what was seen, who was it, when was it seen for the first time, and when was it mentioned for the first time.

So I recommended when Mr. Ben-Veniste was speaking to you that you use the bag itself as a description rather than verbally describe it. I don't think that should offend or shock anyone. But before I turn to Senator Murkowski, I have to tell you, Mr. Sloan, you said you were mystified by Ms. Tripp's testimony.

I want to share with you—because I do not know whether or not you were present or whether you heard specifically her testimony about the night of the 26th and what she observed from the secretary pool area in the Counsel's suite. Mr. Chertoff said, "Do you remember Mr. Burton coming in?" Ms. Tripp responded, "I didn't have an independent recollection of Mr. Burton coming in," and she goes on about the night. "It was later in this evening. I was in the reception area. The door to Bernie's office was closed. At one point in time, Cliff Sloan came out of Bernie's office and asked me if it was possible to remove one of the typewriters to bring back into Bernie's office." Do you recall this?

Mr. SLOAN. No, sir.

The CHAIRMAN. Let me tell you what else took place. "What did you say," Mr. Chertoff asks Ms. Tripp. She says, "I asked him why it was necessary to try to do that when we have five computers in the outer office." Mr. Chertoff says, "What did he say?" Ms. Tripp says, "He wanted a typewriter." So Mr. Chertoff says, "What happened?" Ms. Tripp says, "We had two typewriters, and I explained to him the way that they were configured and plugged in under all of the massive furniture with the taping to the carpet and the commingling of all the myriad cable underneath, that it would be a very difficult endeavor, and then I offered to get him a typewriter"—excuse me—"from elsewhere."

She is very explicit, so when you say you're mystified, I have to tell you, it mystifies me. Would she have any reason to construct this account, that you came out and asked her explicitly for a typewriter. She told you that you have computers, but you said no, you wanted a typewriter. She said we have two, but they're all taped down and so on. You have no recollection of that?

Mr. SLOAN. Absolutely not, Mr. Chairman.

The CHAIRMAN. You contend the first time—no one told you anything about this finding on the 26th.

Mr. SLOAN. That's correct.

The CHAIRMAN. Mr. Neuwirth, are you aware that the Deputy Attorney General was so upset with respect to the fact that the procedure which had been agreed to and which Mr. Adams makes reference to for reviewing the documents—two Justice Department officials along with Counsel would review the outer page—did not take place? He testified with some specificity that that was the agreement and that at one point you actually objected.

Let me read this. "As an example of the clarity of this agreement"—this is Mr. Adams—"Mr. Neuwirth at one point, apparently trying to summarize it"—he said you tried to summarize this agreement—"said that 'Bernie would look at each document and determine privilege.' If he determined no privilege, it could be shown to the law enforcement officers." That's a quote. Then he

goes on. He says, "He was immediately corrected by Mr. Nussbaum."

In other words, you were saying that Bernie was going to do that, and Mr. Nussbaum corrected you and agreed that the Justice Department representatives would review the documents for privilege. The next morning, however, Mr. Nussbaum had changed his mind and said he would look at the documents and decide himself whether they were privileged. Are you saying that Mr. Adams was wrong, that you never attempted to explain it that way and that Bernie then never said no, the Justice Department people together with us will do it?

Mr. NEUWIRTH. Mr. Chairman, I believe that this meeting on the 21st was one in which Mr. Adams—I'm sorry, Mr. Margolis and Mr. Nussbaum disagreed about what would be the best type of procedure to use. It is very possible that during that meeting I attempted to describe what I understood was the option that Mr. Nussbaum was considering. During this meeting and at no point after it or before it did I understand that there was an agreement.

If Mr. Adams himself had understood there was an agreement, it's possible that he may have thought that my description of Bernie's—of the option that Bernie was considering was my attempt to describe an agreement that he thought existed, but I certainly, during that meeting and at any other time, did not understand there to have been an agreement and, in fact, thought that the disagreement between Mr. Margolis and Mr. Nussbaum was quite clear throughout all of these discussions.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, I wonder if I might inquire, may I have my full 10 minutes?

The CHAIRMAN. Yes, you may.

Senator SARBANES. There are some people over here, too, Mr. Chairman.

The CHAIRMAN. I understand, but I'm attempting to do this with some comity, and we will provide some latitude.

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate that very much.

Senator SARBANES. Mr. Chairman, I agree with you in accommodating Senator Murkowski, but given the number of Members that are here, I think we ought to try to keep within——

The CHAIRMAN. We will try that, and when the red light is on, if somebody's in the middle of a question or has a close, collateral one, we will permit that latitude. But I understand the Senator's concern.

Senator MURKOWSKI. Thank you, Senator.

Mr. Neuwirth, I believe you said you had understood that the briefcase was empty. My question is, had you looked into the briefcase before you picked it up on the 26th?

Mr. NEUWIRTH. No, I did not.

Senator MURKOWSKI. Did you think it was empty because you assumed that Mr. Nussbaum, having said it was empty when he conducted the search of the briefcase on the 22nd?

Mr. NEUWIRTH. I thought it was empty because I understood that Mr. Nussbaum had reviewed and removed its contents during the review of Mr. Foster's office on Thursday the 22nd in the presence of the law enforcement officials.

Senator MURKOWSKI. Mr. Neuwirth, if you and Mr. Nussbaum and everyone were under the impression that the briefcase was empty, which you've testified, why wasn't the briefcase turned over to Mr. Spafford, the Foster family attorney, on the 22nd when all the other personal papers were turned over to him? Wasn't the briefcase a personal item? If it was empty on the 22nd, for what reason would it have been kept in the White House?

Mr. NEUWIRTH. I am not sure that I was present at the time that Mr. Spafford determined what materials he would take. What I can tell you is that during the review on the 22nd, Mr. Nussbaum made a pile on Mr. Foster's desk of the documents that had been discussed that everyone in the room agreed could be characterized as personal materials of Mr. Foster.

I don't believe that Mr. Nussbaum actually put the brief bag onto the desk into that pile. I think what may have happened on the 22nd is that Mr. Spafford simply took the materials in that pile that had been identified as personal.

Senator MURKOWSKI. Mr. Sloan, do you have any explanation as to why the briefcase wasn't turned over to the Foster personal counsel?

Mr. SLOAN. Senator Murkowski, it's my understanding that there were a number of personal items that remained in the office, including pictures and so on, and that Mr. Spafford had taken what could fit in one box, and there was some indication that the rest would be sent to him at some later date.

Senator MURKOWSKI. Mr. Neuwirth, you mentioned to Counsel a few moments ago that you turned the brief bag. I wonder if I could ask Counsel to give Mr. Neuwirth the brief bag so he can show us how he turned the bag. First of all, Mr. Neuwirth, is that the briefcase in question?

Mr. NEUWIRTH. I am not in a position to tell you whether it is or isn't.

Senator MURKOWSKI. Would you care to look into it and tell us if Mr. Foster's name is in it?

Mr. NEUWIRTH. There is a label inside the brief bag which says "Vincent Foster, Jr."

Senator MURKOWSKI. Anything else on that relative to other information?

Mr. NEUWIRTH. Senator, if you want me to, I can read the whole label.

Senator MURKOWSKI. Go ahead.

Mr. NEUWIRTH. From Rose Law Firm, a Professional Association, 120 East Fourth Street, Little Rock, Arkansas 72201. Vincent Foster Jr., Rose Law Firm, 120 East Fourth Street, Little Rock, Arkansas 72201, (501) 375–9131.

Senator MURKOWSKI. Thank you very much, Mr. Neuwirth.

Would you describe for the Committee the manner in which—if you care to, I would like you to try and reenact it without necessarily going over to a corner. You went over, you picked up the briefcase and you took it over to where you had some pictures and

you were concerned about ensuring that those pictures weren't scratched and so forth?

Mr. NEUWIRTH. Or bent.

Senator MURKOWSKI. Would you pick up the briefcase and indicate how you turned it as you addressed the pictures that were there? You might have to stand up to do it.

Mr. NEUWIRTH. I believe that I was holding the brief bag.

Senator MURKOWSKI. Was the briefcase open when you were holding it, do you recall?

Mr. NEUWIRTH. I don't know whether it was zipped—it obviously wasn't zipped. I think it was just the way it is now. I think that I held it to carry it over. It was my understanding that it was empty. I didn't look at it—look inside it. It felt empty as it does now. I believe that I bent over to put it into the box and either to the left or to the right turned it so that I could fit it into the box without damaging the pictures. I know that I must have turned it enough. I don't know the exact angle at which I turned it, but I turned it enough for scraps of paper to fall out as I was putting it into the box.

Senator MURKOWSKI. So it was obvious the brief bag was open?

Mr. NEUWIRTH. Yes, sir.

Senator MURKOWSKI. Would you indicate to us in examining the briefcase whether there's a flap or some impediment that would cause any of the notes in question, scraps to be impeded from a viewer?

Mr. NEUWIRTH. There is a flap that goes down the center of the brief bag.

Senator MURKOWSKI. Is that a flap or is that a divider?

Mr. NEUWIRTH. I don't know whether you would use the word "flap" or "divider." It looks like a flap that divides the brief bag.

Senator MURKOWSKI. Is it removable? Is it solid at the bottom? What I'm looking for, in your evaluation of the brief bag, is there some way that the scraps could have been lodged in there so that someone looking in would have found them concealed in the make-up of the brief bag? Is there something loose under there, or is it solid?

Mr. NEUWIRTH. Senator, what I can tell you is that I had to put my hand into the brief bag to scoop out or pull out scraps of paper. I can tell you that in just looking at the bag now, I can see that on one of the sides of the divider or flap, the brief bag doesn't fully expand unless you actually pull it. It's possible that the scraps of paper may have been held down after I first turned the bag by the fact that you have to actually pull the bag open to make that side of the bag not be closed shut on the bottom.

But I can tell you at the time that I found the note, I wasn't paying attention to what may or may not have kept the scraps of paper in. Some fell out when I turned it, and what I did was to go back into the brief bag and do what I needed to do to take out the rest of the scraps of paper that were in there.

Senator MURKOWSKI. How many do you think fell out initially, do you recall?

Mr. NEUWIRTH. I don't remember the exact number, but it may have been fewer than 10.

Senator MURKOWSKI. But there were enough to generate your attention?

Mr. NEUWIRTH. Yes.

Senator MURKOWSKI. Then you looked in the briefcase?

Mr. NEUWIRTH. That's correct.

Senator MURKOWSKI. In looking, where did you find the rest of the scraps? Were they invisible, visible, clearly there, or hidden under some impediment?

Mr. NEUWIRTH. I found them in the brief bag. Some of them I was easily able to take out. Others of them, I had to run my hand, as I said, along the bottom of the bag to scoop them out—excuse me.

Senator MURKOWSKI. So about 10 fell out relatively easily when you had the bag kind of at a sideways level. If you would have turned the bag upside down, they would have all fallen out, I assume?

Mr. NEUWIRTH. I don't know if that's the case.

Senator MURKOWSKI. There was handwriting on these notes of the individual—there was handwriting on one side of the clips, scraps?

Mr. NEUWIRTH. What I can tell you is that there was only handwriting on one side of the pieces of paper when they were put together as one piece of paper.

Senator MURKOWSKI. When you saw the handwriting, I believe you testified that you thought the scraps of paper were Mr. Foster's writing. How did you know they were Mr. Foster's writing?

Mr. NEUWIRTH. I saw the writing on the pieces of paper. I was familiar with Mr. Foster's writing from having worked with him, and that was how I drew the conclusion.

Senator MURKOWSKI. You actually stuck your hand in the briefcase and pulled the balance of the papers out. You didn't turn the briefcase upside down and shake them out?

Mr. NEUWIRTH. I don't know every step I took to get the pieces of paper out. I may have shook the bag a little bit to see what came out. I do know that I had to stick my hand and scoop it across the bottom to get at least some of the pieces out.

Senator MURKOWSKI. When you brought the scraps and the briefcase into Mr. Nussbaum's office and you put them on the conference table, you said—did you call the Justice Department, the Park Police to indicate what appeared to be a note from Mr. Foster's briefcase had been located?

Mr. NEUWIRTH. Not at that time.

The CHAIRMAN. Senator, I know you may have some more questions and the light has gone on. I think you've done a comprehensive job concerning the discovery of the note, and if you want to go into other areas, we'll have to pass it on.

Senator MURKOWSKI. I have some other questions.

The CHAIRMAN. Certainly. We'll come back to the Senator I want to ask one quick thing. Did you bring the briefcase in with you to Mr. Nussbaum's office?

Mr. NEUWIRTH. I'm not certain, Mr. Chairman, but I think I did.

The CHAIRMAN. OK. If you recall, did you bring it in with some pieces of paper in there, or did you—I have to tell you why I am asking you this. Yesterday, we had the FBI talk about finger-

prints—and there was only one palm print, and I am wondering if you picked up a couple of pieces, put them in the bag, carried them in and dumped it out. You think about that later on because I don't want to impinge on my colleagues here, but I would like to get back to that at some point.

Senator Sarbanes.

Senator SARBANES. I am going to yield to Senator Dodd. Just before I do that, Mr. Neuwirth, that briefcase was leaning against the back wall. Is that it?

Mr. NEUWIRTH. Yes, there was a wall under a window behind Mr. Foster's desk.

Senator SARBANES. Would you lean it up against that microphone sort of the way it was leaning against the back wall in front of you there, that briefcase?

Mr. NEUWIRTH. I'll do my best, Senator, given this is not a wall.

Senator SARBANES. I understand that. I don't have a way of putting a wall on the table there.

Senator DODD. Think of yourself as a character in The Fantasticks. Subtle point, probably lost.

Senator SARBANES. I guess the point I am trying to get at is that briefcase, of its own dynamics, closes. In other words, to look into the briefcase, you actually have to open it up; is that correct? There's some briefcases that you set on the floor, you open them and it's wide open, but I take it with this one, when it's standing, you actually have to open it up in order to look into it; is that correct?

Mr. NEUWIRTH. I don't know the various ways how it might open or close under different circumstances. What I can tell you is that when it was leaning against the wall as it was leaning against the microphone here, it was closed at the top, even though it was unzipped.

Senator SARBANES. So you couldn't have seen into it unless you opened it up.

Mr. NEUWIRTH. As I said earlier, I didn't look into it, and I didn't see into it. I don't know what's possible in looking at this bag.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

As I looked over your testimony and background, both of you had been there a relatively short amount of time. Mr. Neuwirth, you had been with the Counsel's Office about 5 months, as I understand it, arrived in January 1993 to July, and Mr. Sloan, you had been there about a month; is that correct?

Mr. SLOAN. That is correct, for my official starting date, yes, Senator.

Senator DODD. Had you known Mr. Foster prior to this? Had you had any kind of longstanding relationship or friendship with him, or had you gotten to know him as a result of your involvement and job at the White House?

Mr. SLOAN. It's solely as a result of my involvement on the job at the White House.

Senator DODD. Is that true in your case as well?

Mr. NEUWIRTH. Yes, it is, Senator.

Senator DODD. Let me, if I can—I'm going to focus my questions to both of you and take off on the response. Mr. Sloan, on page 148

of the deposition that you took—that you responded to, and I'm looking at, as I said, page 148.

The question is to you, "Do you think he chose"—referring here to Mr. Nussbaum—"the proper procedure to review the documents?" And your answer: "You're asking me for a characterization. I think it was a very difficult issue in a difficult circumstance. I understand the legitimate concerns on both sides of the issue and the balance he was attempting to strike. In light of everything that has gone on and some of the controversy and the issues, I sure wish which if there had been a reasonable way, that maybe some of the issues and controversies could have been avoided and such actions would have been taken. But that is probably the best I can do in terms of the kind of characterizing, my assessment of it."

I would like to focus on the two difficulties that you cite in response to that question. That is, one, the environment move. You described it rather eloquently in your opening statement, but I would both like for you to describe it, if you could, again. Can you give some sense here to the Members of this Committee and others as to the kind of mood that existed, to the extent you knew about it, on the night of July 20, but certainly on the 21st and 22nd?

Then I want to come back to the second set of difficulties you refer to in your answer, and that is the difficulties of the issues involved here, because I think a lot of people may be watching or listening to this, hear about privileges. I think they may draw the assumption—I want to demystify the notion of privileges that I think some people assume they're unique or inherent to the White House rather than privileges that all citizens enjoy in the conduct of any kind of an investigation.

But first of all, Mr. Sloan, I would like you to share with the Committee the difficulty, if you will, and the kind of environment, putting one foot in front of the other what is the mood around there. Give us a feel for that.

Mr. SLOAN. It was a mood of complete devastation, of just feeling overwhelmed, terrible shock, sadness, grief, people just completely dumbstruck. I mean, it really seemed like kind of unimaginable pain. The sorrow was so great, and I can remember—I think Steve alluded to earlier when the President, Mack McLarty, and Bernie Nussbaum addressed the White House staff gathered on around noon of July 21. Everybody in that room was so upset.

It was such a sad time, and there was a—I remember there was a pause before the President, Mr. McLarty, and Mr. Nussbaum came in. Everybody was just hushed and overwhelmed with grief. In the remarks, all three of them really were very choked up, and I remember the President at one point during those remarks comparing it to the great floods that were sweeping through the Midwest at that time and talking about it's times like that where it seems that people are so kind of powerless and insignificant in the face of much greater forces and in the face of God's will.

It stands out in my mind—it was a time where everything that was going on, it was such a shock and it was so stunning and so sad. You know, as I said in my opening statement, to this day, when I think back on those days, those are the events and impressions that continue to sear in me and that I continue to remember most vividly.

Senator DODD. Mr. Neuwirth.

Mr. NEUWIRTH. I also agree, obviously, that it was a period of tremendous grief, shock, and sadness.

Senator DODD. In a sense, it's not exactly what you would call the most conducive environment, I suppose, for making the kind of 20/20 hindsight retrospective decisions, what you are describing here to me. This is the predominant mood and the place is grief-stricken. Sadness, that's the dominant emotion as you are making these decisions.

Mr. SLOAN. Absolutely, Senator Dodd, and nothing anywhere close to that dominant emotion.

Senator DODD. So that is the difficult circumstances in which we are now reviewing decisions that are made in which they are made.

Mr. SLOAN. Yes, sir.

Senator DODD. I would like to, if you could, share with us here—you are both knowledgeable in the area of the law and so forth—this whole notion of privileges and competing interests. You had present at principal meetings here, obviously, the Justice Department, the counsel for the Presidency, even have the counsel for the family in the room, which I think is an important element that we are not spending a lot of time addressing here, but who have their own specific issues which most Americans can relate to rights of privacy. Describe for me, Mr. Sloan, what those competing interests are and the legitimacy of them as you are trying to sort out what is the best way to proceed here.

Mr. SLOAN. On the one hand, there is a lawyer's obligation of confidentiality with respect to attorney-client privileges, which is subject to the Code of Professional Responsibility, and an attorney is absolutely obligated to maintain the confidences of the client.

Senator DODD. That's any client; that's a private citizen?

Mr. SLOAN. Yes, sir.

Senator DODD. Any citizen?

Mr. SLOAN. That's correct.

Senator DODD. It is not a unique privilege here. We are talking about one that is extended to every citizen in this country.

Mr. SLOAN. That's right and that's one of the most fundamental obligations that an attorney has. In addition, this is a situation in which it's the White House, it's the President, the most sensitive discussions and documents and so you have the additional consideration of executive privilege, and just generally the confidentiality of discussions with the President or the President's aides, which are well recognized in law.

So you have those concerns which are very weighty on one side, and you have the concerns on the other hand of law enforcement officials in looking for a suicide note or an extortion note, and so those are the different concerns that are at issue.

Senator DODD. All of them have their legitimacy?

Mr. SLOAN. Yes, sir.

Senator DODD. But they're difficult issues?

Mr. SLOAN. Yes, sir.

Senator DODD. You were trying to point that out, I think, in your deposition. Is that what you're referring to, in a sense, there?

Mr. SLOAN. Absolutely. I think they're quite difficult.

Senator DODD. To sort out. In that regard, sort of running the film fast forward here, if we can, while there has been significant discussion and obviously strong expressions made about which was the proper course to follow. At the end of the day, did law enforcement have an opportunity to review the documents in that office?

Mr. SLOAN. To review the documents that they expressed an interest in, yes, sir.

Senator DODD. Did they find anything in those documents which would indicate there was any malfeasance on the part of anyone associated with the Counsel's Office in the White House?

Mr. SLOAN. Not to my knowledge, sir.

Senator DODD. Can you respond to that, Mr. Neuwirth?

Mr. NEUWIRTH. Senator, there was an opportunity during the review for the law enforcement officials to identify documents or categories of documents that they wanted to see. My understanding is that over a brief period of time following the review, all of the documents that had been requested were made available to the law enforcement officials who requested them.

Senator DODD. And to the best of your knowledge, has anything been revealed in those documents that would indicate there was any mishandling of papers associated with Vince Foster's suicide?

Mr. NEUWIRTH. Not to my knowledge, Senator.

Senator DODD. Did either of you ever receive any instructions from anybody to destroy any documents in Vince Foster's office?

Mr. Sloan.

Mr. SLOAN. No, sir.

Senator DODD. Mr. Neuwirth.

Mr. NEUWIRTH. No, Senator.

Senator DODD. Did either one of you destroy or conceal any documents in Vince Foster's office on or after July 20?

Mr. SLOAN. No, sir.

Mr. NEUWIRTH. No, Senator.

Senator DODD. Did anyone ask you to conceal from law enforcement officials any information that might have been pertinent to their investigation?

Mr. SLOAN. No, sir.

Senator DODD. Mr. Neuwirth.

Mr. NEUWIRTH. No, Senator.

Senator DODD. Did anyone instruct you to impede, obstruct, or otherwise interfere with the investigation by law enforcement officials?

Mr. SLOAN. No, sir.

Senator DODD. Mr. Neuwirth.

Mr. NEUWIRTH. No.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski, I know you wanted to finish up, but Senator Mack has been waiting for awhile, so we will get back to you. I have some questions, but I am going to recognize Senator Mack, and then we will come back to you to finish up.

Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Mr. Neuwirth, I want to pick up again on your discussions with the—during the FBI investigation about the note. The reason I do is there's a sense that says to me that there's more to this than just having failed to say to the FBI when you were asked about it to include the First Lady. And here's why: FBI 302 reports for Mr. Nussbaum does not mention the First Lady had seen the note. That's one. Two, FBI 302 report from Mr. Burton——

The CHAIRMAN. I'm wondering, Senator, has it been established that Mr. Nussbaum was there when the First Lady came in to see the note?

Senator MACK. I think it has.

The CHAIRMAN. OK. That gives some relevance to it.

Senator MACK. Maybe I ought to start over again. Is there any disagreement as to whether the First Lady saw the note?

Mr. NEUWIRTH. The First Lady was shown the note on the day that I found it.

Senator MACK. Very good. Let me just ask you, was Mr. Nussbaum also—did he see the note?

Mr. NEUWIRTH. Yes. Mr. Nussbaum helped me put it together.

Senator MACK. Mr. Burton, did he see the note?

Mr. NEUWIRTH. Yes, he did.

Senator MACK. First, FBI 302 reports. Mr. Nussbaum does not mention it in his interview with the FBI. The FBI 302 report for Mr. Burton does not mention it in his interview with the FBI. Your comments earlier were that you did not mention it until the end of the discussion. I will get back to that in a moment. That's number three. Number four, the Park Police list of people the White House says saw the note—no mention of the First Lady. Cheryl Mills' notes from the White House Counsel's meeting on 7/29/95 doesn't mention the First Lady had seen the note. Mr. Heymann, Deputy Attorney General, had not been told that the First Lady saw the note.

It's as if there were—we all remember the famous 18 minutes of tapes being eliminated during Watergate. It's as if there were an 18-second snippet——

Mr. BEN-VENISTE. It was 18½. I remember that pretty well.

Senator MACK. —18½-second snippet of everyone's memory with respect to the First Lady—everybody just forgot that. All these individuals just forgot it. Mr. Neuwirth, I think you—in fact, you went out of your way this morning to go over and over again that you went out of your way to mention that the First Lady was aware of it. That does not show up in the FBI 302. I mean, help me out. Help me with the credibility here. I just have real questions about this.

Mr. NEUWIRTH. Senator Mack, I can only speak for myself. In the numerous instances when law enforcement officials have asked me about the events related to Mr. Foster's death and my finding of the note, I have attempted to answer fully and forthrightly every single question that has been posed to me. I don't think I have ever in any way failed to give my full recollection of events, including events related to the First Lady.

In the case of this FBI interview, as I said earlier, I was not asked questions during the interview to which an answer to the questions would have included reference to the First Lady's having come into Mr. Nussbaum's office after I had found the note. What I can tell you only is this: In every instance where I had been asked questions about it, which I think is virtually every other time I have been questioned about this, I have described in as much detail as I can the fact that the First Lady came into Mr. Nussbaum's office after I found the note.

In the case of the FBI interview, when I was not asked questions about it, as I said earlier, I went out of my way to indicate that I knew that the First Lady was aware of the note, and I was not asked any further questions about it.

Senator MACK. Is that because the FBI asked the question, "Did she read the note?"

Mr. NEUWIRTH. The FBI did not ask the question did the First Lady read the note. My best recollection is that the FBI, at the end of the interview, gave an open-ended question that would allow me to talk about who was aware of the note in responding to it. I went out of my way in that context to make clear that the First Lady was one of the people who, to my knowledge, was aware of the note prior to the time that it had been made available to law enforcement officials.

Senator MACK. Could you tell us how you went out of your way to do this? This is something that apparently has really—it's etched in your memory that you went out of your way. How did you go out of your way?

Mr. NEUWIRTH. By mentioning the fact that she was aware of the note.

Senator MACK. "Mentioning" doesn't sound to me like it's going out of your way.

Mr. NEUWIRTH. As I recall, it was not something that was necessarily responsive to the question I was asked, but I made sure that I included it so that I could let the officials know that the First Lady was aware of the note prior to the time that it was made available to law enforcement officials.

Senator MACK. You're going out of your way to tell them that the First Lady was aware. Did you indicate that she was in the room, Mr. Neuwirth?

[Witness conferred with counsel.]

When you indicated to the FBI—or, as you say, you went out of your way to tell the FBI that the First Lady was aware of the note, did you indicate to the FBI that she was in the room?

Mr. NEUWIRTH. No, I did not.

Senator MACK. I mean, you've been stressing here that you've gone out of your way to impress upon them that she was aware of this. Why wouldn't you say that she was in the room?

Mr. NEUWIRTH. Senator, I have always understood my obligation to be to answer truthfully every question that is asked of me. And I have answered, to the best of my ability, truthfully, every question that has been posed to me in all of the circumstances in which I've been questioned about this.

Senator MACK. Well, you know, there's one other place where the First Lady's name does not show up, and that's on the fingerprint

list. One could draw the conclusion that the White House has been going out of its way to not mention the First Lady's coming into the room, to keep her name off that list.

Mr. NEUWIRTH. I have certainly told numerous law enforcement officials. I have described her involvement in coming into the office in detail in my deposition. I am certainly not involved and have never heard of any effort not to discuss the fact that she came into the office.

Senator MACK. Mr. Chairman, can you tell me whether the FBI agent that interviewed Mr. Neuwirth has been deposed? And if he has not been, if it is reasonable from the Chairman's perspective to depose the FBI agent with respect to this "going out of the way"?

The CHAIRMAN. With respect to this question, I do not believe we have all of the information, but I'm going to ask both Mr. Chertoff and Mr. Ben-Veniste to review it.

Mr. CHERTOFF. I think, Mr. Chairman, actually we did depose the witness. I think it was Agent Salter who was up here, and I will check the deposition and see for sure. My recollection is that he was asked generally if there was anything he was told that was not in the report, and he would have indicated everything he was told was in the report. But we'll verify that.

Senator MACK. Mr. Sloan, do you have any idea as to why your name doesn't show up on the fingerprint list?

Mr. SLOAN. No, I was not even aware of that fact until you just——

Senator MACK. No, as a matter of fact, it does show up. I shouldn't.

Mr. SLOAN. Oh. Well——

Senator MACK. What was your answer to my first question?

Mr. SLOAN. My answer is I have no idea what fingerprint list you're talking about, whether my name is on it or not.

Senator MACK. Let's show him the fingerprint list.

The fingerprint list I'm referring to is a list of people that the FBI was looking on the note to determine whether these individuals' fingerprints would have shown up on the note. Do you have any idea as to why your name is on that list?

Mr. SLOAN. No. It would be speculation why my name would be on the list, other than—I mean, I was in the office on July 22 during the review.

Senator MACK. But so was Mr. Foster's secretary.

Mr. SLOAN. No, she was not in the office during the review of the documents that Mr. Nussbaum conducted in the presence of law enforcement officials. The only people from the Counsel's Office who were in the office were me and Mr. Neuwirth, Mr. Nussbaum, and then Bill Burton from the Chief of Staff's Office. But Senator Mack, it's not my list. This is the first time I've ever seen it. You're asking me to speculate, but I mean, that would be my speculation if that's what you want, but I can't do better than that.

Senator MACK. Let me go back to Mr. Neuwirth for a moment, and this has to do with a meeting on July 22, I believe, in Mr. McLarty's office to discuss the procedures under which there would be a review of the documents in Foster's office.

Mr. NEUWIRTH. That's correct.

Senator MACK. Were you at that meeting?

Mr. NEUWIRTH. Yes, I was.

Senator MACK. Did you speak with Ms. Thomases on July 22?

Mr. NEUWIRTH. No, I did not.

Senator MACK. Were you present when someone else was on the phone with Ms. Thomases?

Mr. NEUWIRTH. No, I was not.

Senator MACK. Do you know about any of these phone calls with Ms. Thomases—I assume you know what I'm referring to?

Mr. NEUWIRTH. The only phone conversation with Ms. Thomases that I'm aware of is the one that Mr. Nussbaum told me he had had with her.

Senator MACK. Did anyone else besides Mr. Nussbaum tell you about conversations with Susan Thomases?

Mr. NEUWIRTH. No, they did not.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, I am going to try to—I would suggest that we break at 1:30 p.m. and come back at 2:30 p.m., so we will take an hour. We can still continue. We will take your side. Then I am going to go back to Senator Murkowski to finish up. You have a few minutes and then to Senator Frist who has been waiting patiently so he can start his. That will conclude it.

I am going to indicate that there will be an opportunity for the press to look at the briefcase. Mr. Dinh will have the briefcase. He will keep it under his control, but if you want to look at it, it will be made available here under the auspices of the Committee.

Senator Sarbanes—I believe this is important because there is a question as to whether there are areas—what one person might constitute as a flap that could keep people from seeing things or as a divider. I think the proper characterization, that's my own, is a brief bag as opposed to a briefcase, but this is my characterization and somebody might choose to characterize it in a different way. So we should let people, particularly those who have to give a description, examine it under the control of the Committee—under Mr. Dinh's control and anyone that the Minority side would want to be there. It will be done here when we break.

Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

I take it when the Independent Counsel transmitted this briefcase, there were no restrictions on our use of it?

The CHAIRMAN. None that I was aware of.

Senator SARBANES. It's ours now, I take it, to use.

The CHAIRMAN. Well, I guess so.

Senator SARBANES. I think it's a good idea to be shown, but I just want to be sure: Has it, in effect, been given over to the Committee now, the briefcase?

The CHAIRMAN. For purposes of the hearing. It is here for purposes——

Senator SARBANES. It's for us to use as we choose.

The Independent Counsel——

The CHAIRMAN. No restrictions have been placed on it.

Senator SARBANES. Good. I hope we get the Independent Counsel to do similarly with other matters that we've——

The CHAIRMAN. I join you in those requests, and I continue to hope the greater access that we have to information, the more complete and thorough the hearing can be.

Senator SARBANES. I have never seen it. Is there a transmittal letter from the Independent Counsel with respect to the briefcase?

Mr. CHERTOFF. I don't believe there is, Senator. I have never heard—both Mr. Ben-Veniste and I have spoken to the Independent Counsel. My understanding is that it is a piece of physical evidence. It is obviously not testimony. There's no Grand Jury secrecy that attaches to it. It is a preexisting piece of physical evidence, and I am not aware of any restriction that has been placed upon its use. It is what it is. It is not going to change, and I have no reason to believe that there's any concern about it.

The CHAIRMAN. Provided that people don't poke holes in it, now. I mean, if you're going to start sticking your finger in—I think there should be some limitations set, but I think it would be good to have it examined, fair and proper, and I note that it was produced at the request of both Counsels.

Mr. BEN-VENISTE. I am unaware of what the actual transmittal document was and whether there was a voucher for it that might contain any restrictions on how it might be used by others. I know we would be careful with it.

Mr. CHERTOFF. I completely agree. Obviously, one of the reasons we want to have Mr. Dinh with the briefcase is to make sure that no one tampers with it or does anything to it.

The CHAIRMAN. For example, physically changes its characteristics by trying to see if you can rip the side out.

Senator SARBANES. Mr. Sloan, Senator Mack asked you whether you knew why your name was not on this list.

Mr. SLOAN. That's what I thought that he said.

Senator SARBANES. That was the question, as I understood it, and you said you didn't even know there was a list.

Mr. SLOAN. That's correct.

Senator SARBANES. Senator Mack said to you well, in fact, your name is on the list and I take it your answer to that question is you didn't know there was a list.

Mr. SLOAN. That's correct.

Senator SARBANES. So however the question is put to you, you didn't know about this list; correct?

Mr. SLOAN. That's correct.

Senator SARBANES. I would like to ask you about this review of materials in the office on the 22nd. Was it your function—or did you undertake to make like a handwritten list? It's document 364. Are you familiar with this handwritten list?

Mr. SLOAN. Yes, sir.

Senator SARBANES. It's some 16 pages and later you typed it up; is that right?

Mr. SLOAN. That's correct.

Senator SARBANES. This is 16 pages of listing of various matters. Are those the items that Mr. Nussbaum was identifying in the course of this meeting with the law enforcement people on the afternoon of July 22?

Mr. SLOAN. Yes. These reflect comments that Mr. Nussbaum made.

Senator SARBANES. You were putting down each item that he read out?

Mr. SLOAN. Well, I can't claim that it was comprehensive, but everything that's here are things that he read out.

Senator SARBANES. You mean there might have been additional things that he called out which you did not list?

Mr. SLOAN. That's correct.

Senator SARBANES. But is everything listed matters that he did call out?

Mr. SLOAN. Yes, sir.

Senator SARBANES. How long did that process go on?

Mr. SLOAN. My recollection is roughly an hour, perhaps more. I think in the course of these hearings, I've seen it identified as an hour and a half, and that doesn't strike me as incorrect.

Senator SARBANES. So these 16 pages of notes come from what Nussbaum stated out loud to the group as he identified various items; is that correct?

Mr. SLOAN. Yes, Senator.

Senator SARBANES. As that process was proceeding, would the law enforcement officials at various times say well, we would be interested in that particular item?

Mr. SLOAN. Yes.

Senator SARBANES. So Mr. Nussbaum would be reading out these items—I mean, we have this fairly lengthy list here, and I gather there were others as well, but as he read them out, at particular times did the law enforcement officials say we would be interested in that?

Mr. SLOAN. That's right.

Senator SARBANES. Then what would happen?

Mr. SLOAN. It would go into—I think it was the middle pile on Mr. Foster's desk.

Senator SARBANES. What happened to those identified items?

Mr. SLOAN. Those were ultimately shown to the Park Police on July 30.

Senator SARBANES. They came and looked through each of those items?

Mr. SLOAN. Yes.

Senator SARBANES. To your understanding, were the Park Police satisfied that they had had an opportunity to look at all documents that they were interested in?

Mr. SLOAN. As far as I know, yes, sir.

Senator SARBANES. During that process, were the personal items of Mr. Foster also identified?

Mr. SLOAN. During the review process?

Senator SARBANES. Yes.

Mr. SLOAN. Yes.

Senator SARBANES. They were also put in a pile?

Mr. SLOAN. Yes.

Senator SARBANES. What happened to that pile? Do you know?

Mr. SLOAN. Those were given to the Foster family's personal lawyer at the conclusion of the review, and there was a discussion at the end of the review that the law enforcement officials would deal directly with the Foster family lawyer with respect to those materials.

The CHAIRMAN. Was that Mr. Spafford who was there at the time?

Mr. SLOAN. Yes.

Senator SARBANES. Mr. Chairman, I yield the remainder of my time to Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. Sloan, I would like to direct your attention, if I could, to the evening before the search of Mr. Foster's office, and specifically to the meeting in Mr. Nussbaum's office that afternoon, July 21. Was there a discussion at that time about interviews that would take place that next day of certain White House officials?

Mr. SLOAN. Yes.

Mr. KRAVITZ. Which White House officials were to be interviewed the next day?

Mr. SLOAN. The secretaries in the outer office of the Counsel's Office.

Mr. KRAVITZ. Who was going to be conducting those interviews?

Mr. SLOAN. The Park Police and the FBI.

Mr. KRAVITZ. Was there any discussion during that meeting on July 21 in Mr. Nussbaum's office about whether any White House Counsel's Office attorneys would be present during those interviews?

Mr. SLOAN. I don't recall exactly whether that was discussed on the 21st or not.

Mr. KRAVITZ. Mr. Neuwirth, do you have any recollection of that?

Mr. NEUWIRTH. I know that at some point on the 21st, the Park Police indicated that they wanted to interview Mr. Nussbaum. Several hours before that interview took place, I spoke to a representative of the Park Police on the telephone and indicated that Mr. Sloan and I were planning to sit in on their interview of Mr. Nussbaum.

Mr. KRAVITZ. Do you remember who that representative from the Park Police was?

Mr. NEUWIRTH. I believe that it was one of the two Park Police officials who actually were present during the interview of Mr. Nussbaum.

Mr. KRAVITZ. Did that Park Police official object in any way to you and Mr. Sloan sitting in on the interviews?

Mr. NEUWIRTH. No.

Mr. KRAVITZ. Mr. Sloan, did you and Mr. Neuwirth have a meeting later that day, July 21, with the White House officials who were to be interviewed the next day?

Mr. SLOAN. Yes.

Mr. KRAVITZ. What was the purpose of that meeting?

Mr. SLOAN. The purpose was to facilitate the law enforcement inquiry, to tell them about the interviews and, as I say, to facilitate the inquiry.

Mr. KRAVITZ. Who was present during that meeting?

Mr. SLOAN. I remember that Steve Neuwirth was there, I was there, and I think Betsy Pond, Linda Tripp, and Deb Gorham.

Mr. KRAVITZ. Did you and Mr. Nussbaum provide any instructions to the people who were to be interviewed the next day?

Mr. SLOAN. I don't recall whether Mr. Nussbaum was there or not. I remember Mr. Neuwirth being there, but we told them to answer all questions honestly and forthrightly.

Mr. KRAVITZ. I see that our time is up.

Thank you, Mr. Chairman.

The CHAIRMAN. We're going to try to conclude this in the next 10-minute session. Let me touch on one quick thing. At the end of the day of the 22nd, as it relates to the law enforcement officers, about 13 people, it's been testified, were in the room when you, Mr. Sloan, and Mr. Neuwirth were next to Mr. Nussbaum—he was basically behind the desk. Were you there, Mr. Neuwirth?

Mr. NEUWIRTH. I was present, but I was not next to Mr. Nussbaum, Mr. Chairman.

The CHAIRMAN. Were you on either side of them?

Mr. NEUWIRTH. Mr. Sloan was adjacent to Mr. Nussbaum on one side, and I was next to Mr. Sloan.

The CHAIRMAN. OK. So the two of you were standing in close proximity. Is that fair to say?

Mr. NEUWIRTH. I was at the side of Mr. Foster's desk.

The CHAIRMAN. Mr. Nussbaum was behind the desk; is that correct?

Mr. NEUWIRTH. That's correct.

The CHAIRMAN. When was that investigation completed, about what time did the law enforcement officers, the Park Police, the FBI, the two Justice Department people—about what time, Mr. Sloan? Do you recall?

Mr. SLOAN. It is an extremely rough estimate, but I would say 3 p.m.

The CHAIRMAN. About 2:30 or 3 p.m.

Mr. SLOAN. 3, 3:30 p.m., my very rough estimate.

The CHAIRMAN. It's in that general area, early afternoon?

Mr. SLOAN. Mid-afternoon.

The CHAIRMAN. Or mid-afternoon, fine. Did there come a time when most of these people—had the law enforcement officers left?

Mr. SLOAN. Yes.

The CHAIRMAN. Do you recall a time when Mr. Spafford was there with you and Mr. Nussbaum?

Mr. SLOAN. No. I remember Mr. Spafford packing up the personal effects, but I don't have a clear recollection of who was present at the time when he was packing them up.

The CHAIRMAN. If he says there was a time when the room had been cleared, people had left with the exception of himself, and he was securing those documents that were going to be left in his possession, and that you were there and Mr. Nussbaum was there, does that refresh your recollection?

Mr. SLOAN. I don't recall that, but it's possible. That's possible.

The CHAIRMAN. We're going to return to that later.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

If I may turn back to my questioning with regard to Mr. Neuwirth's statement when he was in Mr. Foster's office putting the note together after he had taken the pieces out from the brief bag. When Mr. Nussbaum arrived, had you completed the process of putting the notes together?

Mr. NEUWIRTH. No, I had not.

Senator MURKOWSKI. When Mr. Nussbaum came in and saw you putting the notes together, what did he say?

Mr. NEUWIRTH. I'm not sure what his exact words were, but he came and sat with me at the table and helped me finish putting the note together.

Senator MURKOWSKI. I'm curious to know what he said or if you can recall or recount what you think he said.

Mr. NEUWIRTH. I think that when he came into the office, I explained to him that I had found these pieces of paper in the brief bag. I'm not sure what, if anything, he said to me at that point beyond coming over to the table and helping me put the pieces together.

Senator MURKOWSKI. It's difficult for me to accept that he would just come in, sit down, and help you put the pieces together without making some kind of a comment. You had called him, and your testimony is that you have no recollection of Mr. Nussbaum saying anything to you. He came in and just started putting things together; is that right?

Mr. NEUWIRTH. My testimony was that I don't recall exactly what, if anything, Mr. Nussbaum said to me at that point. He may have said something, but the main thing I remember is that he came in and sat down with me at the table and helped me put the note together.

Senator MURKOWSKI. What did you say to him?

Mr. NEUWIRTH. I told him the circumstances under which I had found the note.

Senator MURKOWSKI. Was Mr. Nussbaum surprised, shocked, relieved that you had found the note? Any expression of emotion?

Mr. NEUWIRTH. Without knowing exactly what Mr. Nussbaum was thinking, my understanding was that he was surprised that I had found the note.

Senator MURKOWSKI. How did he communicate his surprise?

Mr. NEUWIRTH. Again, I don't—as I've told you, I don't recall exactly what he said at any particular point. I just had the impression based on my interaction with him.

Senator MURKOWSKI. He didn't say anything like well, it was in the briefcase, how in the world did I miss it? Nothing of that nature?

Mr. NEUWIRTH. I certainly do not believe we had that conversation.

Senator MURKOWSKI. Your comments to him were what?

Mr. NEUWIRTH. My initial conversation with him, I told him the circumstances under which I had found the note. We put it together. We looked at what it said, and he went to get Mr. Burton. He may have, prior to having gotten Mr. Burton, tried to transcribe the note, but, again, it's possible that other discussion occurred within those events, but that's my recollection of what events occurred after I found the note.

Senator MURKOWSKI. Did Mr. Nussbaum attempt to locate the First Lady at that point or shortly thereafter?

Mr. NEUWIRTH. Mr. Nussbaum came back to the office with Mr. Burton. There was a brief discussion with Mr. Burton, at which point Mr. McLarty was contacted by telephone. Following a brief

discussion with Mr. McLarty in which he said he would call back from Chicago, Mr. Nussbaum went to get the First Lady and, very shortly thereafter, came back with her into his office.

Senator MURKOWSKI. Were you there during the entire time that the First Lady was in Mr. Foster's office?

Mr. NEUWIRTH. Yes, I was.

Senator MURKOWSKI. What did the First Lady do or say?

Mr. NEUWIRTH. When the First Lady came in, Mr. Nussbaum, I think, told her what had happened, that I had found the note. I think that he gave her a description generally of the note. I think she obviously saw it on the conference table. Very shortly after she entered the room, Mr. McLarty called back. Mr. Nussbaum put the call on his speaker phone. Mr. McLarty indicated that he and Mr. Gergen—David Gergen—were on the phone to complete the conversation that had started earlier, and at that point, the First Lady left.

Senator MURKOWSKI. My question is—this was Mr. Nussbaum's office that you were in, at that point?

Mr. NEUWIRTH. That's correct.

Senator MURKOWSKI. What did the First Lady say?

Mr. NEUWIRTH. I don't remember what her exact words were. I think that——

Senator MURKOWSKI. Did she say anything?

Mr. NEUWIRTH. She—I would be surprised if she didn't say something. This was obviously something that related to someone she had known very well. I think I recall that she looked very taken aback, and I had the sense that this was another part of a very sad tragedy for her. But beyond that, I don't recall the details of any discussion that took place.

Senator MURKOWSKI. Do you recall that she said anything?

Mr. NEUWIRTH. I have told you that I think she may have said something. It would surprise me if during the period she was there she didn't say anything. I just really don't know exactly what she said.

Senator MURKOWSKI. Do you know if she read the note?

Mr. NEUWIRTH. I certainly know that the note was described to her. It was not my impression that she had actually read it.

Senator MURKOWSKI. But she saw it there?

Mr. NEUWIRTH. I know that she saw it on the table.

Senator MURKOWSKI. Did she stay in the office very long? Did she say anything to anyone in the office, to your recollection?

Mr. NEUWIRTH. As I told you, I think she probably did say something. I'm not sure exactly what she said. She was there relatively briefly because Mr. McLarty's call came in, and she left when that call started.

Senator MURKOWSKI. Well, Mr. Neuwirth, did it surprise you on learning of the discovery of the note that the First Lady just came in, looked, listened, and left; she made no comments about the note? Didn't that, in reflection, surprise you? It's been finally found or there's some relief associated with it?

Mr. NEUWIRTH. I don't think that I have suggested that she did not say anything. All I have told you is that I don't recall the conversation when she was there, and I am sure that she spoke. I think that I recall——

Senator MURKOWSKI. Excuse me. I will concede that my time is almost up, so pardon me for trying to rush you.

When you discovered the note that everybody had been trying to locate for 4 days or so, you must have had some relief in finding it. Did you or didn't you? Was there an expression there, thank God, we finally found something?

Mr. NEUWIRTH. What I initially found was a note in Mr. Foster's handwriting. Obviously, I was very conscious of the fact that I had found a document that seemed to me to be the type of document that law enforcement officials had been looking for, and I promptly contacted Mr. Nussbaum and promptly put the note together.

Senator MURKOWSKI. But you weren't shocked, you weren't surprised, you weren't relieved, and doesn't it surprise you that Mr. Nussbaum or the First Lady would not have expressed some emotion upon learning of this at that juncture?

Mr. NEUWIRTH. Again, I have never said that they didn't express an emotion. Obviously, I'm surprised——

Senator MURKOWSKI. You just don't recall.

Mr. NEUWIRTH. I didn't say I don't recall whether they had expressed an emotion. I am telling you I am not able to recall exactly what was said during those periods. This was moving very quickly. I was very conscious of the fact that I had found a note of the type that appeared to be what the law enforcement officials were looking for. I very promptly contacted Mr. Nussbaum. We very promptly put the note together. He very promptly got the Chief of Staff, and there were very promptly discussions with Mr. McLarty and later Mr. Gergen about the appropriate steps to take now that the note had been identified.

Senator MURKOWSKI. I would suggest that each Member of the Committee take the time to physically look at the brief bag and satisfy themselves as to whether or not one would, upon opening it, visually see 20 some-odd notes in the bottom.

Thank you, Mr. Chairman.

The CHAIRMAN. We're going to reconvene——

Senator DODD. Mr. Chairman, just on the briefcase notion, because—first of all, may I inquire, were there any fingerprints taken from the briefcase? Did the Independent Counsel——

The CHAIRMAN. I am not aware that we have inquired of the Independent Counsel or the FBI or received any information pursuant to that. Maybe Counsel can enlighten us whether they have or not.

Mr. BEN-VENISTE. Based on everything that has occurred to this point, Mr. Chairman, I don't believe the Independent Counsel would respond to an inquiry with respect to whether any such test was done or its auspices.

The CHAIRMAN. We are not aware of that; however—and he may or may not furnish us with that information. I don't know.

Senator DODD. The reason I raise it, Mr. Chairman, and I, again—and I don't want to because I think we can become sort of ghoulish, and the press wants to look at it, but as I recall, when this briefcase first became part of the Committee property, our colleague from Alaska indicated that the Independent Counsel had given him the briefcase.

The CHAIRMAN. No, no, I don't think he said that.

Senator DODD. I gather there was an oral agreement to get it.

The CHAIRMAN. It had been sent over by way of request.

Senator DODD. An oral request.

The CHAIRMAN. Yes.

Senator DODD. What surprises me here is that an Independent Counsel, without any voucher—I gather there's no voucher, no receipt, a piece of evidence in a case—I mean, I am a little mystified as to why something that could have some value here would be turned over to the Committee without any voucher, receipt requirements. It strikes me as being a little bit irresponsible in the conduct of handling what could be important evidence. Obviously, we think it's important evidence here. Is that normally the way things are done?

The CHAIRMAN. Let me say—and I'm not going to attempt to describe what can and should be kept in the manner as if it would be introduced in a trial court. Obviously, that would not be sufficient. If we were a trial court, that would not be proper, but we're not. We permit great latitude as it relates to the examination, as it relates to witnesses, as it relates to hearsay, testimony, conversations that people have heard of other people.

It was very tempting to get information, so we have not requested—now, understand one thing, that both Counsels joined in the request for the bag. It wasn't ex parte. It came over on an evening when there was an inability to reach each other. A number of phone calls were made. I think we were preparing for this, and if you want to call it, Senator Sarbanes, a slip-up, I will concede that, but it is here, it is the bag, and we will ascertain whether or not fingerprints have been taken.

We will ask—I don't know whether they have or at any point the FBI found it necessary to do that long before the Independent Counsel came in. It would seem to me that that would have been under the prerogative of the Justice Department when they were informed and when, eventually, they took charge. At some point in time they may have dusted it just as they checked the note itself for prints. I don't believe that would have been under the auspices of the Independent Counsel, but rather the Justice Department because obviously the question of contamination would thereafter arise. So we will ascertain whether the FBI at any point in time or the Special Counsel dusted this.

Senator DODD. The reason, Mr. Chairman—maybe I am incorrect, but I just looked at the transcript, and when I said earlier that our colleague from Alaska made the request—I was looking at the transcript of the hearing and in fact, you said, "Yes, the Independent Counsel did furnish us with"—and Senator Murkowski jumps in and said, "I made the request for the briefcase, Senator Sarbanes."

The CHAIRMAN. Yes, he asked that morning that it be made available to him.

Senator DODD. From the Committee rather than having made the request from the Independent Counsel that was the confusion.

The CHAIRMAN. Correct.

Senator DODD. I was hoping we might inform the Independent Counsel on these matters, where we are requesting vouchers, re-

ceipts, and so forth are appropriate. I realize we are not a court of law, but there is a proper way to handle these materials.

The CHAIRMAN. I think the Senator makes a good point, and that certainly is something that he has to undertake, but we will ask Counsels to address that. We are going to reconvene at 2:30 p.m. and break for this 45 minutes. The bag will be made available for inspection, as I have indicated previously.

[Whereupon, at 1:45 p.m., the hearing was recessed, to be reconvened at 2:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. I'm sorry for the delay. We indicated we would start at 2:30 p.m. Having said that, it is now the turn of the Democrats to examine. They have indicated that they are getting prepared to do so. So without relinquishing anything, we're going to go to Senator Frist and then turn back.

Senator Frist.

OPENING COMMENTS OF SENATOR BILL FRIST

Senator FRIST. Thank you, Mr. Chairman.

Mr. Sloan, I would like to ask you about a couple of things that occurred during the document review, several of which you referred to in your opening statement, the document review in Mr. Foster's office on Thursday, July 22, 1993.

Last week I had the opportunity to question Mr. Spafford, who is counsel to the Foster family, who was also present at that document review on July 22. What I would like to do over the next few minutes is to compare what you and Mr. Spafford have said about what occurred during that document review.

First, Mr. Spafford states that when FBI Agent Salter in the back of the room stood up, you said something to the effect are you trying to look at the documents. Is that correct?

Mr. SLOAN. Something to that effect. I don't remember those exact words, but something to that effect, yes, sir.

Senator FRIST. Did Mr. Salter stand up, was it—it was actually during the document review and cause you to respond in a way that may have been more aggressive than you would have liked?

Mr. SLOAN. Yes, sir.

Senator FRIST. Mr. Spafford told us when I think the question was asked were you kidding, were you serious, he said you were serious and said that you may have been trying a little too assiduously, and I guess that led you to apologize in that meeting; is that correct?

Mr. SLOAN. Yes, sir.

Senator FRIST. Then you continued the apology today. Were you apologizing to defuse the situation that had been created by his standing up?

Mr. SLOAN. I was apologizing because I felt that it had been a rude and inappropriate thing to say.

Senator FRIST. From your description of the event, Mr. Spafford sounds very similar in terms of overall interpretation of the events during that aspect of the meeting. I guess the one thing that I don't understand about that is what caused you, what motivated you to overreact?

Mr. SLOAN. Well, let me just tell you what happened in as much detail as I can. At one point during the review Mr. Neuwirth leaned over to me and whispered to me that he's looking at the documents, referring to Agent Salter, and I looked up and it did seem to me that Agent Salter was looking at the documents. That seemed to me to be inconsistent with the procedures that I understood that Mr. Nussbaum had announced and explained to the people, and so that's what led me to say it.

I want to emphasize by mentioning Mr. Neuwirth's comment to me I don't mean at all to implicate him in my comment. He just

said it to me. But that's what drew my attention to it, and it seemed to me inconsistent with the procedure. So I made the comment.

Senator FRIST. Were you afraid that when Mr. Salter stood up in the back of the room that he would actually see a document on the table?

Mr. SLOAN. Well, let's see. First of all, I wouldn't characterize it—the way I would say it, it seemed to me that he was trying to look at the documents. I hate to repeat this and repeat, you know, whatever kind of insult or injury, but if you are asking me what I was reacting to, it seemed to me that he was kind of leaning forward and kind of looking at the documents on the desk or trying to look at them. That was what it seemed to me at the time.

Senator FRIST. Was there anything about the documents on the desk that caused you to react——

Mr. SLOAN. No, sir.

Senator FRIST. —too assiduously? On that day was there anyone else or anybody else other than you, Mr. Nussbaum, and Mr. Neuwirth who looked at Mr. Foster's documents?

Mr. SLOAN. There's nobody else who I think was in a position to see them except possibly Bill Burton, who was in and out during the course of the review. Mr. Nussbaum was the person who was primarily looking at the documents and describing them, but at least it was my understanding that Mr. Neuwirth and I and Mr. Burton would have been in a position to see some of the documents at least.

Senator FRIST. Do you recall at any time that Mr. Burton either stopped or looked down at the documents during the review?

Mr. SLOAN. No, the only thing I recall Mr. Burton doing is at least once or twice turning a document over that was face up, turning it over on the desk.

Senator FRIST. You don't—did he put it either—I guess there were three piles or several different piles, do you recall which pile he put those documents in?

Mr. SLOAN. I don't recall him putting them in—I don't recall that being associated with a particular pile.

Senator FRIST. OK. Let me turn to a second point. Many of the things that you said in your deposition today agree with what Mr. Spafford has told us. However, there is one key point on which you disagree, and again, you referred to it in your opening statement. Mr. Spafford testified that during the course of the document review, Mr. Nussbaum emptied all of the documents from Mr. Foster's briefcase. Mr. Nussbaum said something to the effect of I have all the files and the documents from the briefcase. That's according to Mr. Spafford.

Second, Mr. Spafford states that after the document review, everyone left the room except you, Mr. Spafford, and Mr. Nussbaum. Mr. Spafford, in my questioning as well as in his deposition, clearly stated that you, actually holding the briefcase, told Mr. Nussbaum that there were scraps of the paper at the bottom of the briefcase, and that not only did you show it but Mr. Nussbaum actually responded—and Mr. Nussbaum said something to the effect using Mr. Spafford's words, "Don't worry about it, we're going to go through all of this later." That's the contradiction. I really want to,

if at all possible, have you explain that to me over the next couple of minutes.

After Mr. Nussbaum had taken papers out of the briefcase, did you notice anything at the bottom of the briefcase?

Mr. SLOAN. Senator Frist, in order to be fully responsive, I need to repeat something that I mentioned in response to questions from Mr. Chertoff this morning, which is that my recollection as I sit here today of what Mr. Nussbaum did with the briefcase in the office, my current recollection is very, very limited. It really—all that I believe that I recall now is Mr. Nussbaum taking some things out of the briefcase and putting it down either under or behind the desk.

Now, I have some contemporaneous notes that have more detail which I believe are my best recollection at the time of what my understanding was with respect to what he had done with the briefcase. The reason I say I believe I recall that even about my limited recollection, is that I'm not entirely sure that even as to that limited recollection whether I may not be getting that from my contemporaneous notes or the times I've been questioned about it and everything since. I just wanted to be clear about that.

Senator FRIST. I understand your recollection is difficult. That's why I have a hard time going back to your opening statement when you say Mr. Spafford is mistaken. How can you say that—if your recollection is so vague and you're not sure exactly what you saw, how can you say he was mistaken and my recollection, which is vague, is right?

Mr. SLOAN. Because the reason why I feel that, and I believe that, Senator Frist, is that if the event had happened in the way that I understand Mr. Spafford understands it to have happened, I firmly believe that I would have recalled it on Tuesday night, July 27, when I learned that there had been these scraps of paper in the briefcase. I mean it just seems to me that at that point I would have had a recollection of that incident of Mr. Spafford.

Certainly as the events of the week went on that that would have, that that would have come back to me. I have absolutely no recollection of anything like that, and I have no recollection of recalling that at that time, and it seems to me——

Senator FRIST. So when you—I understand. When you say that you have no recollection, you don't mean to say that it did not happen?

Mr. SLOAN. All I can say, Senator, is that as far as I am concerned, it did not happen because I don't remember anything remotely like that, and I believe that I would have recalled it the following week.

Senator FRIST. But when you say—and again, I'm not an attorney, when you say I don't recall, that means it could still have happened?

Mr. SLOAN. What I'm saying, the best I can do is tell you I have absolutely no recollection of it, and more than that, I think I would recall it if it had happened.

Senator FRIST. But you're not sure—when you say I don't recall, does that mean you're not sure whether it happened or not?

Mr. SLOAN. It means I have no recollection of it.

Senator FRIST. But are you sure it didn't happen?

Mr. SLOAN. I can't do better than what I've told you, Senator, I have no recollection of it or anything remotely like it and I believe that I would have recalled it the following week.

Senator FRIST. So in my questioning I talked to Mr. Spafford and he tells me in clear terms that he is certain that he saw you—in fact his words, I asked in my testimony last week, "So are you certain that Mr. Sloan during this period"—I said, "So are you certain that Mr. Sloan during this period told Mr. Nussbaum that there were scraps of paper at the bottom of the briefcase." This is after he had already said that. Mr. Spafford said, "That's words—I don't recall the exact words, but words to that effect." And that's after—and not only that, Mr. Spafford actually stood up here I believe opened the briefcase and then he said, Mr. Spafford, I quote, "He was standing"—meaning you—"and he had it by the handles and he had it open like this and he was looking into the briefcase."

Then further Mr. Nussbaum responded, according to Mr. Spafford—that according to Mr. Spafford, he said that Mr. Nussbaum made a comment, and I quote, "His comment was something to the effect that we will get to all of that later. We have to look through the materials and we will look through that later." So what we have is Mr. Spafford very vividly telling us what his interpretation is of watching you open this up. You don't recall it and I guess what I need again—and I'm not an attorney, does that mean it could still have happened, it may have happened, or you are denying it happened?

Mr. SLOAN. Senator, I'll say again I have absolutely no recollection of it happening. I think I would recall it if it happened.

Senator FRIST. I guess Mr. Spafford, again in my opening statement with him, he clearly had no axe to grind. He hadn't worked with the current Administration, had not been involved in the Presidential race or campaign in any way. As far as you're concerned, there would be no reason for Mr. Spafford to invent this story?

Mr. SLOAN. Of course not. There's no reason that I would sit here and challenge Mr. Spafford's good faith. Of course not.

Senator FRIST. Let me just close—putting all that together because they are two entirely different stories, can you say with 100 percent certainty that Mr. Spafford's story is false?

Mr. SLOAN. Senator Frist, I can't say with 100 percent certainty about these events of 2 years ago. What I can tell you is that I have no recollection of anything remotely like that. I think I would have recalled it. The first I heard of Mr. Spafford's recollection was a few weeks ago in the course of these proceedings and the preparation for it and inquiries from the press. I have to tell you it is almost a surreal experience to hear that somebody has some recollection involving you from 2 years ago which is completely at odds with what you recall of the events and I also recall quite clearly that I learned of the scraps of paper for the first time on the night of Tuesday, July 27.

Senator FRIST. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Kerry.

Senator KERRY. Thank you, Senator Sarbanes.

Mr. Sloan, was there an agreement in your judgment or wasn't there an agreement the night of the 21st with Mr. Nussbaum and Mr. Heymann?

Mr. SLOAN. I don't recall there being an agreement, Senator Kerry, and I if I could just explain a little bit of what my recollection is of those discussions. I remember quite clearly on the morning of July 22 when Mr. Nussbaum announced how the procedure was going to go forward, and I have a vague recollection of what I think of in my mind as preliminary discussions before then. But I don't have a recollection of what the——

Senator KERRY. Well, how much time did you spend discussing the question of access and privilege with Mr. Nussbaum?

Mr. SLOAN. I don't recall spending much time discussing it with him on the 21st or the 22nd myself.

Senator KERRY. Were you present at the meeting with the two Park Police officers and Mr. Neuwirth?

Mr. SLOAN. Yes, sir.

Senator KERRY. Were you present when Mr. Neuwirth made his summary?

Mr. SLOAN. I don't recall him making the summary. I believe I was present for the——

Senator KERRY. Mr. Neuwirth, do you recall making that summary?

Mr. NEUWIRTH. As I said this morning, Senator, I'm sure a point may have come during the meeting when I described my understanding of the option Mr. Nussbaum was considering. I did not believe that there was an agreement. I would not have described one during the meeting.

Senator KERRY. You do not believe there was an agreement?

Mr. NEUWIRTH. That's correct. I thought there was a disagreement between Mr. Margolis and Mr. Nussbaum.

Senator KERRY. Do you recall when you made your summary statement that it was corrected on the spot?

Mr. NEUWIRTH. I don't recall making a statement purportedly to summarize any agreement. I don't recall a point where Mr. Nussbaum said that he accepted Mr. Margolis's premise, which is what I understand Mr. Margolis said the correction was. My vivid recollection is that Mr. Margolis and Mr. Nussbaum disagreed about the best option to pursue under the circumstances.

Senator KERRY. Let me ask you something. You know, I don't know how my colleagues respond, but I'm sort of troubled by this. I mean, we go through a lot of meetings here in the Senate, and God knows we can get confused at times, but it seems to me that if I'm hired as counsel and I'm in an office discussing an issue like this on the occasion of a very unique and tragic event, I might have a little better memory of something as critical as the issue of a search which clearly was an issue.

Mr. NEUWIRTH. I think I have a very vivid recollection of the position that Mr. Margolis took and the position that Mr. Nussbaum took, and I've tried to describe that today.

Senator KERRY. How is it—both of you gentlemen might help me with this. I mean, your brains are your stock in trade. You are both lawyers, Mr. Heymann is a lawyer. Highly trained, extremely skilled, long, long reputation in Government. Had clear ethics con-

cerns with respect to the process here. How is it that there sort of appear to be just two sides to this now, one recollection on one side supported by three or four people and one recollection on the other side, different. Can you shed any light on that?

Mr. SLOAN. Senator Kerry, the only thing I can say and I'm trying to think it through and recognizing this isn't a thought process I went through at the time, but all I can tell you is that for people at the White House, this issue was one of myriad issues that needed to be addressed.

In terms of even—for example, on the 21st I remember the arrangements for Vince Foster's funeral, and either on the 21st or the 22nd whether Mr. Nussbaum was going to be a pallbearer, and I testified earlier I remember several other items being discussed at the meeting on July 21. I remember the bag of trash being discussed. I remember when the office was sealed being discussed—and the way that I remember the end of the meeting on the 21st is just that what was going to happen with the office the next day was something that was going to be addressed the next day. There were so many things that had happened and were going on that day from the perspective of the people at the White House. It may be that people from the Justice Department with a different focus have a different recollection. That is purely speculation trying to respond to your question, but it's trying to give you a sense of the context.

Senator KERRY. Is there any lack of recollection on your part that clearly the Park Police were feeling disgruntled? Did you perceive that?

Mr. SLOAN. I did not perceive that.

Senator KERRY. Did you perceive that, Mr. Neuwirth?

Mr. NEUWIRTH. If they were disgruntled at the time these events were occurring they didn't express that to me.

Senator KERRY. Did you have a sense that they wanted to do things otherwise?

Mr. NEUWIRTH. I thought Mr. Margolis made quite clear on behalf of the Justice Department and perhaps on behalf of all the law enforcement officials that he thought that he should play the role that Mr. Nussbaum ultimately played during the review on the 22nd.

Senator KERRY. Is it your judgment that he should not have?

Mr. NEUWIRTH. I think that the decision that Mr. Nussbaum had to make was a difficult one under the circumstances.

Senator KERRY. Do you share the judgment? Is it your judgment that he should not have played that role?

Mr. NEUWIRTH. It is not—I don't feel I'm in a position to assess what the outcomes would have been had Mr. Margolis played that role instead of Mr. Nussbaum.

The concern that was expressed by many people was that there could be a long-term implication for the Presidency if there were a privilege waiver under these circumstances, and I'm not in a position to assess whether those implications would actually have been borne out had Mr. Margolis played that role. The reason that I understand Mr. Nussbaum made the decision to play the role he did was precisely because of those concerns.

Senator KERRY. That's not what I asked you, though. I didn't ask you whether it would have been borne out. I asked you whether you share the judgment that he should not have done it?

Mr. NEUWIRTH. What I've tried to say is that I can't reach——

Senator KERRY. All you have to do is say yes or no.

Mr. NEUWIRTH. —I can't reach the conclusion that he should not have done it.

Senator KERRY. What about you, Mr. Sloan, do you think that was the right judgment?

Mr. SLOAN. I think it was a reasonable judgment, and if I could just explain. I do wish—if there had been some way to avoid all of the controversy and all of the questions that have gone on, I wish it had been undertaken. But I haven't heard yet an option that seems to me to satisfactorily address all the options, all of the issues.

Senator KERRY. Let me ask you this question, did you share a judgment that there might have been a de facto waiver by virtue of a police authority scanning documents to ascertain whether their generic content, not specific but generic content might have shed light on how and why Vince Foster died?

Mr. SLOAN. When you say did I share that view, I can't tell you that I went through that thought process at the time. I remember being involved in the preparations but I don't remember discussions with——

Senator KERRY. Do you now share that view?

Mr. SLOAN. I think it's a serious issue. I do. I don't think it is at all a frivolous issue.

Senator KERRY. I'm not dismissing it one way or another, or characterizing it, I'm trying to ascertain your view of it and other people's views of it and make a judgment about it. It strikes me as an observer sort of gathering the evidence here and trying to listen to this that there was some measure of adversarialness in the atmosphere in that room. Your comment, which you began your opening today apologizing again for, seems to me to characterize a kind of wall between the folks who were there trying to do their job and those of you who were sort of the gatekeepers of this file.

Mr. SLOAN. Mr. Nussbaum immediately corrected that, so——

Senator KERRY. I understand. I understand where it's gone and the road it traveled. But I'm trying to talk to the fact of it. It strikes me that these people who were there trying to do their job, indeed met, I don't know whether it was a wall of suspicion or a wall of arrogance or paranoia, as Mr. Heymann characterized it yesterday, but certainly the mere standing up by a Park Police officer to solicit a fairly caustic or semi-sarcastic comment, "Are you trying to look at the documents," is to send a signal of stiff arm.

Mr. SLOAN. Senator Kerry, let me just say this: I won't go more on about the comment because I think I tried to address that there is——

Senator KERRY. Tell me about the atmosphere.

Mr. SLOAN. About the broader point. One thing that I think is important to realize, which your question brings up, is that I think—and I was trying to allude to this earlier, I think to some extent there were differences in perspectives in terms of what was

going on with respect to the people. Let me give you an example of the people involved.

It has been my understanding since the events in question that the Park Police felt on July 21 quite upset that they were essentially around all day I think and not being let in. They got there in the morning and then they have this meeting at 4 p.m. and then it's put off until the next morning. So from their perspective they're cooling their heels, why is the White House treating them like that.

From the perspective of somebody at the White House at that time, there were so many things going on July 21. Say from around 10 a.m. when I think Mr. Nussbaum went to the briefing with the Park Police about the discovery of the body, after that at around 11 or 11:30 a.m., the President was in the Counsel's Office consoling us.

At about noon the President, Mack McLarty, and Bernie Nussbaum were addressing the assembled White House staff in a very, very emotional meeting about the loss of this good friend and colleague. Right after that there was an effort to get facts so that Mr. Gearan and Mr. McLarty could make an announcement to the public and answer questions.

The meeting with the Park Police was set up promptly after that. Now, it turned out that there was maybe a 6-hour delay from 10 a.m. until 4 p.m. when things were going on, and the Park Police felt like they were cooling their heels. From the perspective of people in the White House there were many, many things going on. It wasn't intended in any way as a slight to the Park Police.

There were so many things going on in a time of great emotional trauma, and I think that—and there are other events that I can think of along these lines where I think there were misunderstandings based on kind of different perspectives, different environments, and different contexts at the time.

Senator KERRY. Well, I understand all that. I don't want to minimize any of that. I absolutely understand and sympathize with the emotional trauma and upset. But when once the meeting got under way and once the process was implemented, the task was to be accomplished. It seems to me that—again, I say that putting myself just into their shoes and trying to feel the situation, I'm sympathetic to the notion that there was, it seems to me, a sense of distrust or a wall that was put up between you and them.

Mr. SLOAN. Let me give you one other example of a——

Senator KERRY. Did you see them as being sort of, "on the same team." Was there any reason not to believe——

Mr. SLOAN. They were Government officials and so absolutely on the same team.

Senator KERRY. What——

Mr. SLOAN. But——

Senator KERRY. Was it your perception that Mr. Nussbaum at that point had changed the ground rules?

Mr. SLOAN. I don't remember a perception that Mr. Nussbaum changed the ground rules. I remember a concern being expressed by the Justice Department when Mr. Nussbaum explained how things were going to proceed, but——

Senator KERRY. What was your reaction to that expression of concern?

Mr. SLOAN. Well, it was expressed to me that Phil Heymann had a concern either by David Margolis or by Phil Heymann directly, on the phone, or both. What I said—I believe that I recall talking to Phil Heymann and he started to say he had a concern about the procedure, and I said you need to talk to Bernie about it because it was my understanding that it was Mr. Nussbaum's decision and he was the person who he should talk to. So my reaction was to try to get him to talk to Mr. Nussbaum about it.

Senator KERRY. I know the light is on, if I could just ask one, two more.

In your judgment, you're a very capable lawyer and extraordinarily bright person with a great career here, I wonder if you feel, certainly in retrospect, that this investigation might have been better served to have had the Justice Department making that initial cut?

Mr. SLOAN. Senator Kerry, all I can say, again, is that I wish—let me put it this way. If that had avoided all of the issues and all of the controversy that has gone on, I think there is much to recommend it. I am not convinced that process would have met all of the concerns about confidentiality and privilege, and I think it's——

Senator KERRY. On the converse side, do you suspect that those who want to find a conspiracy might then have suggested well, that wouldn't have met it either because they were merely Justice Department and they work for the Administration and so, of course, that was tainted?

Mr. SLOAN. Absolutely. I mean, I've heard reference to some proposal about looking at the first page. I'm positive that if that had been the procedure there would have been questions about what was on page 2, page 3, page 4, and so on.

Senator KERRY. So there was no end in your judgment?

Mr. SLOAN. My judgment, as I sit here today, I don't see—the alternatives I've heard met all of the questions——

Senator KERRY. The final question and an important one which we're not going to resolve today, but it's your judgment, both of you, that the issues of attorney-client privilege as well as executive privilege remain legitimate questions with respect to any kind of waiver issues or perusal; is that correct?

Mr. SLOAN. Yes, sir.

Senator KERRY. Mr. Neuwirth.

Mr. NEUWIRTH. Yes, sir.

Senator KERRY. Thank you.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Neuwirth, how long have you been at the White House?

Mr. NEUWIRTH. Since January 1993.

Senator SHELBY. Did you know Mr. Philip Heymann over at the Department of Justice during your tenure there?

Mr. NEUWIRTH. I think I had very limited interaction with him. The way I met him was during the transition.

Senator SHELBY. Did you know him by reputation before——

Mr. NEUWIRTH. I knew——

Senator SHELBY. —you came to Washington?

Mr. NEUWIRTH. —I knew that Mr. Nussbaum held him in very high regard. I learned that, again, as I said, in the transition.

Senator SHELBY. Did you know that he had served as head of the criminal division of the Justice Department in the Carter Administration?

Mr. NEUWIRTH. Yes, sir.

Senator SHELBY. And you did know that he was actually serving the Clinton Administration as the Deputy Attorney General or the number two person in the Justice Department; is that correct?

Mr. NEUWIRTH. Yes, Senator.

Senator SHELBY. Now, going back to when, I believe it was the next day after Mr. Foster died, and we've all gone over this a lot of times and I'll try to be precise, you and Mr. Sloan, among others, were present at the White House when Mr. Adams and Mr. Margolis came over to talk with you; is that correct?

Mr. NEUWIRTH. Yes, sir.

Senator SHELBY. Was this on the 21st day of July?

Mr. NEUWIRTH. That's my best recollection.

Senator SHELBY. Mr. Adams from the Justice Department, did you know him before this, Roger Adams?

Mr. NEUWIRTH. Yes, sir.

Senator SHELBY. Did you know he was a career experience player in the Justice Department?

Mr. NEUWIRTH. Yes, sir.

Senator SHELBY. OK. Did you know Mr. Margolis of the same bent?

Mr. NEUWIRTH. I think this may have been the first time that I met him.

Senator SHELBY. You and Mr. Sloan were in this meeting. Now, you testified earlier that you didn't think there was an agreement reached as to how the search would be conducted the next day; is that correct?

Mr. NEUWIRTH. Yes, sir.

Senator SHELBY. Do you know your testimony would be different from the testimony of one Mr. Heymann, the Deputy Attorney General, who said it was his understanding there was an agreement made—Mr. Adams, Mr. Margolis, Mrs. Monaco, Mr. Hubbell, the Park Police, Markland, Hume, and the FBI, that there was an agreement reached and that the search would occur the next morning at 10 a.m.

Now, I would like to put this up on the screen. I have a teletype, a copy from the FBI office to the Director of the FBI, marked priority. I believe you have a copy in front of you there. This is dated the 22nd day of July, 1993, and it's the FBI Washington metropolitan field office's understanding about what went on at the White House. You know, to confirm—to bring the Director up to date.

I'll refer you to the second page. I believe about the middle of the page. It says, and you can see, "An initial meeting was held with White House Counsel Bernard Nussbaum at which time it was agreed"—"agreed that the victim's office, which is located adjacent to Mr. Nussbaum's, would continue to be sealed by the U.S. Secret Service until 10 a.m. on 7/22/93 at which time Mr. Margolis and Adams would conduct a preliminary examination of documents lo-

cated within the office. The purpose of this examination is to identify and to segregate any privileged documents between the President and the White House Counsel's Office. Subsequent to this examination, the U.S. Park Police"—"USPP and the WMFO" the Washington Metropolitan Field Office, meaning the FBI—"investigative team will review all pertinent documents in an effort to gather evidence in this matter." Have you seen this? You got one before you, haven't you?

Mr. NEUWIRTH. This is the first time I've seen it but I've looked at it as you read it.

Senator SHELBY. So in addition to the other people that I relayed their names that it was their understanding they testified there was an agreement including the FBI, it's your testimony, Mr. Sloan, that there wasn't one? Are you basically just parroting Mr. Nussbaum trying to help him and bolster his side of the argument?

Mr. NEUWIRTH. No, Senator, I'm not.

Senator SHELBY. Well, what are you doing?

Mr. NEUWIRTH. I'm trying to tell you the truth.

Senator SHELBY. Isn't it basically correct, Mr. Neuwirth, that the White House Counsel, Mr. Nussbaum, which you both associated with, asked the Department of Justice to get involved in the first place—to get involved; is that right?

Mr. NEUWIRTH. That's my understanding.

Senator SHELBY. Your understanding. What about you, Mr. Sloan, do you understand that?

Mr. SLOAN. A little different.

Senator SHELBY. OK. Go ahead.

Mr. SLOAN. What I remember is that there was an issue on the morning of July 21 about how this investigation was going to proceed, that the Park Police were there—I don't remember what the specific request was, and Mr. Nussbaum, with a number of us in the office, talked about whether he should call Phil Heymann and possibly a high-ranking official at the Interior Department to be clear about how they wanted to conduct the investigation and whether it should be a Justice Department investigation or a Park Police investigation, but that he should touch base with them to see what they thought would be best.

Senator SHELBY. If the Justice Department was going to be involved in the first place, how could they interject themselves into the search of the office with the White House Counsel if they're not going to be involved? In other words, if they were just going to be there as observers where the—while the White House Counsel conducted the search, isn't that sort of strange that you would call the Justice Department and then have second thoughts, not that you did, but that Mr. Nussbaum?

Don't you realize—I think you do—that part of the Department of Justice through Mr. Heymann's objection was that they felt that they were being misused or used by the White House Counsel's Office and made to feel like window dressing or observers there. You followed this whole scene. Do you understand otherwise? In other words you've seen where they objected to the whole sham. Mr. Sloan, do you want to comment?

Mr. SLOAN. There obviously is a lot in your question and with all respect there is a—there are a number of characterizations in your question that I disagree with.

The ones at the end, I don't agree it was a sham, and I don't know how—I don't have the full question in front of me but I did not agree with many of the characterizations.

Senator SHELBY. You disagree with Mr. Heymann's observations of what went on, a man who is the Deputy Attorney General of the United States who has impeccable integrity?

Mr. SLOAN. I have very great respect——

Senator SHELBY. And no axe to grind.

Mr. SLOAN. —I have very great respect for Mr. Heymann. I'm not fully familiar with his testimony of yesterday, but I'm not exactly sure which ones you are talking about.

Senator SHELBY. Why do you believe, the both of you, that—isn't it strange just about everybody, everyone that was in the July 21 meeting at the White House except White House Counsel and the two associates or others believe there was an agreement except Mr. Nussbaum, Mr. Neuwirth, and Mr. Sloan? In other words, everybody else from the Justice Department, the others that were there thought there was an agreement—and, obviously, I think there was an agreement.

Mr. NEUWIRTH. Senator Shelby, it is possible that the people that you've mentioned perceived that some sort of agreement had been reached. What I can tell you is that my perception—and again, I was not a participant in any conversations that Mr. Nussbaum had with Mr. Heymann. The sole perception I had was that Mr. Margolis and Mr. Nussbaum disagreed about the proper way to conduct the review.

Senator SHELBY. Mr. Neuwirth, going back to when you are—or going forward, I guess, to the day you found—your testimony that you found the torn-up notes in the briefcase, did you ever think about calling immediately the FBI, the Justice Department when you found something that was that important and you knew from your training and experience was that important?

Mr. NEUWIRTH. Yes, sir, I did——

Senator SHELBY. Why didn't you do it?

Mr. NEUWIRTH. I did think of it.

Senator SHELBY. Why didn't you do it, though? You thought of it but why didn't you do it?

Mr. NEUWIRTH. Well——

Senator SHELBY. Everything was hush hush, wasn't it?

Mr. NEUWIRTH. I can tell you that when the issue of what to do with the note was initially discussed I took the position that it would be appropriate, from what I knew, to immediately notify the law enforcement officials.

Senator SHELBY. Why didn't you do that on your own? You're Associate Counsel of the White House, a well educated, trained lawyer, why didn't you do this? Isn't this a first, basic instinct to do?

Mr. NEUWIRTH. I told Mr. Nussbaum that was what I thought was appropriate. In a subsequent telephone conversation in which I reiterated that view—and this was the conversation that included Mr. Nussbaum, Mr. McLarty, Mr. Gergen, and Mr. Burton—two points were made that I had not initially considered. One was that

Lisa Foster was going to be in Washington the next day, and the view was expressed that it would be appropriate to show her the note as a courtesy before doing anything else with it.

The second view that was expressed was that it would be appropriate to have an opportunity to tell the President about the note. He was traveling in Chicago that day, and Mr. Nussbaum made the decision at the end of that conversation that it would be appropriate to wait for the opportunity to do those two things before notifying the law enforcement officials.

Senator SHELBY. But don't you wish that you had notified somebody immediately? Wouldn't it have given more credibility to this whole investigation?

Mr. NEUWIRTH. Senator Shelby, all I know is that what I've told you today about finding the note is true and that I—I agree that it is possible that some may have—some questions may not have been asked subsequently if law enforcement officials had been immediately advised that the note had been found. I know that the note was turned over to law enforcement officials the next day.

Senator SHELBY. Was it about 36 hours later, more or less, before the law enforcement officers knew about the note?

Mr. NEUWIRTH. I think that I found the note sometime around 4 p.m. in the afternoon on Monday the 26th. My understanding, although I wasn't present, was that in the early evening of the 27th the note was made available to law enforcement officials. It doesn't seem to me that that's a full 36 hours, but I wasn't present for the meeting when the note was made available.

Senator SHELBY. My time's up.

The CHAIRMAN. I have to tell you before turning to Senator Sarbanes, I have a little problem understanding how and why it was, particularly when I look at Ms. Tripp's testimony, that Mr. Sloan, Mr. Neuwirth, was not advised of this. You two had been working as a team with Mr. Nussbaum certainly in the review of the documents and in advising Counsel, and you were both Associate Counsel in the same office. It is difficult for me to understand when such a significant event, going back to the 20th, the night of the tragedy, people coming to look understandably for some indication why this took place—and I say understandably, looking for some evidence as to Vince's state of mind. The review of the documents and then the fact that Sloan is almost—like he would have to be almost deliberately kept out of Bernie Nussbaum's office.

I understand that you were there, Mr. Neuwirth, Mr. Burton was there, the First Lady at some point came in, but not Sloan. You were there while this is going on. This is not a giant—this isn't on the other side of the building. This is in the same office.

So, Mr. Sloan, I don't understand how that could be. I find it very difficult, given particularly the testimony of Ms. Tripp, who said you came out of the office and asked for a typewriter—and I can understand why you would want a typewriter—and that troubles the Senator.

Mr. Ben-Veniste or Senator Sarbanes.

Senator SARBANES. I'll yield to Senator Simon. Just let me clarify one thing.

Mr. Sloan, where was your office? Was it in the White House Counsel's suite?

Mr. SLOAN. My office was in the Old Executive Office Building.

Senator SARBANES. Entirely separate building across the way; is that correct?

Mr. SLOAN. That's correct.

Senator SARBANES. OK.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes and Mr. Chairman. If I may have the attention of the Chairman here too.

The CHAIRMAN. Certainly.

Senator SIMON. Before we started I had a TV interview, and they had the briefcase out there as a prop for the TV interview. I just frankly think that is not in good taste. I also think here is something that may be needed in a legal proceeding. We're not in the TV production business. If the Majority staff OKed that I think they made a mistake. If the——

The CHAIRMAN. Senator, if I might address that. Prior to our recess for lunch, I indicated that under the control of the Committee, because there had been great interest and a very real question about whether there were compartments or a flap, everyone would have an opportunity to see it and make a description.

This is not like evidence in a trial, but I indicated that it was my intent to make it available so that this was not something that was unknown, and if the Senator was not here, obviously he would not have been aware of that. I understand the reason people may disagree with it, but it was in an attempt to deal with the various characterizations as a briefcase, a brief bag, and an area where there may have been a crevice, for example, to keep slips of paper from readily being seen and make sure that we—not only the Members of the Committee, but also the media—would have an opportunity to look at it and to be as accurate as possible in our account of it. It was for that purpose.

Now, it was supposed to be under the control of a staffer—or at least being observed, because the one thing we didn't want was it ripped apart. I believe there was a staffer there at all times. I asked that Mr. Dinh be there so that we would have some control. The next thing we know we would lose it altogether. I hope that is a satisfactory explanation.

Senator SARBANES. Could I? Senator Simon, I didn't understand this to happen. Do you mean the briefcase was actually in the hands of the—Mr. Chairman, that was, it seems to me, an egregious abuse of what I understood. I understood that the press was to come over here, right over there and they were to be shown this briefcase and have a chance, in effect, to look at it. Now, I'm told that it was taken from the room, as I understand what Senator Simon is saying. I don't know how that could have happened. That's totally contrary to——

Senator KERRY. Mr. Chairman, it's further my understanding that pieces of paper were put in it, various demonstrations were made, flipping it over, which, to my limited legal capacity, none of which I would imagine can amount to actual replications of whatever initial inspection took place.

The CHAIRMAN. I believe that it is not fair to say that it was an attempt to indicate that this is an accurate representation of the manner in which the bag was or could be utilized, but rather of the bag itself. Now, I don't think it goes to the essence or the gravamen of the entire issue, but I certainly understand people being concerned. Your concern has been noted. Again, it was the intent, as I have indicated, to make it available for the media to inspect because, again, we have heard, for example, it described as a bag with a flap. We have heard that it had a divider. I use that as an example. The same bag has been characterized as one with a divider in the middle, one with a flap in the middle. One where pieces of paper could come underneath.

It seems to me in terms of openness and attempting to provide an accurate description so that we and the public have an idea of what it is, it certainly does not violate the spirit of a fair and open hearing. If anyone feels that it has, I'm sorry, but I don't see it that way, to be quite candid with you.

I attempted to be open and fair. Having said that, I did not know it would be taken from the room to the area where the TV cameras are, probably so they could get a better view, and it was probably an accommodation. I was not aware of that, but I was aware, as I stated previously, that it would be made available so there could be pictures taken of it and it would be, again, a fair and accurate representation visually of the bag as opposed to the descriptions that people have offered.

I think Senator Kerry raised a very legitimate point. It's not fair to attempt to describe how pieces were or weren't—it was in order to make the bag itself available for inspection, not to attempt to indicate how it may or may not have been opened. It certainly does not contaminate evidence in the traditional sense of a criminal trial. This is not a criminal trial. This is a hearing where the latitude is much greater. The opportunity to develop all of the information necessary to reach judgments is being undertaken.

Senator SARBANES. Mr. Chairman, let me say I think there is an interest in understanding about this Foster briefcase, but I don't think that there is a legitimate interest in turning it into a stage prop, which is what has consistently been happening here in dealing with it.

I must say it was certainly not my understanding in any way, shape or form that this bag was going to leave the room and become a prop, a media prop. My understanding was that it was to be over there under the control, I assumed, of a responsible member of the staff, but obviously I have my doubts about that now. An opportunity would be given to the media to examine the bag and in effect see some of the very points that have been raised in the course of this.

I never understood that this had happened until Senator Simon just brought it to my attention, and I think it goes way beyond the bounds of what I understood was going to take place.

Senator SIMON. Mr. Chairman, it's frankly a judgment call. My opinion is that it was a mistake. I would hope if we have the gun or if we have any other evidence we keep it to the Committee. The television cameras are here, they can see what they want to, but we're not in the television production business, and we shouldn't

try to be. I assume since I didn't use very much of this past 10 minutes, Mr. Chairman, that I might have a few extra minutes.

The CHAIRMAN. Certainly.

Senator SIMON. May I ask both of you, Mr. Sloan, Mr. Neuwirth, to your knowledge, has anyone in the White House been trying to cover up anything?

Mr. SLOAN. No, sir.

Mr. NEUWIRTH. No, sir.

Senator SIMON. Very specifically, Mr. Nussbaum has been dealt some verbal blows here. To your knowledge, has he done anything illegal?

Mr. SLOAN. No, sir.

Mr. NEUWIRTH. No, sir.

Senator SIMON. Has he done anything unethical?

Mr. SLOAN. No, sir.

Mr. NEUWIRTH. No, sir.

Senator SIMON. Mr. Sloan, you were asked by Senator Shelby, or maybe it was Mr. Neuwirth, don't you wish you had done things differently. Mr. Sloan, in your opening statement you said, "My dominant memory impression of the days following Vince Foster's death is one of overwhelming disbelief, shock, grief, pain, and sadness. I cannot speak for others, but there is nothing in my experience to compare with a suicide of a friend or colleague."

Because of that, is it somewhat understandable that some decisions were made that were maybe not the wisest decisions, that as you go through this kind of experience you have to make decisions with other things on your mind?

Mr. SLOAN. It certainly is right that it's a very, very difficult time to make decisions.

Senator SIMON. Mr. Neuwirth.

Mr. NEUWIRTH. I agree it was a very difficult circumstance and that the issues that were confronted were also very difficult in and of themselves.

Senator SIMON. Now, let me ask you a question that I raised yesterday. Is each of you represented by counsel here?

Mr. SLOAN. Yes, sir.

Mr. NEUWIRTH. Yes, sir.

Senator SIMON. May I ask, and if you feel uncomfortable I won't press you on this, but may I ask you, Mr. Neuwirth, how much you're paying for counsel?

Mr. NEUWIRTH. I would be comfortable keeping that as a matter between myself and my attorney.

Senator SIMON. Mr. Sloan.

Mr. SLOAN. With all respect, the same answer, Senator Simon.

Senator SIMON. Let me ask both of you this question. When you have to come before this kind of a Committee and you feel it is prudent and wise to have counsel even though no one is charging either of you as violating any law, no criminal statute, should the Federal Government protect employees by compensating counsel in this kind of a situation?

Mr. SLOAN. Yes, sir, I believe that it would be appropriate to do that.

Senator SIMON. Mr. Neuwirth.

Mr. NEUWIRTH. I have to say that the question of the circumstances under which someone should be reimbursed for counsel is something I really haven't thought about, and I apologize, I just don't feel comfortable opining generally about that right now.

Senator SIMON. Well, as you reflect on it if you can send me a note telling me your reflections, I would appreciate it.

Mr. NEUWIRTH. I would be happy to, Senator.

Senator SIMON. I thank you, Mr. Chairman, for letting me have a little extra time.

The CHAIRMAN. Certainly.

Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

I was taken with the questioning by the Senator from Massachusetts because it goes along the same lines as my own thought pattern in this circum- stance as he asked about the atmosphere that existed there. I would like to turn to that, and, if I may, set for you the overall parameters and atmosphere that I have gleaned out of these hearings.

I won't pretend that I've been at every hearing, but I've tried to follow as much as I can, and I've heard a good deal of the testimony. The Park Police coming into the atmosphere that existed at the White House felt that they had to complain to the Chief of Staff to the Secretary of the Interior about a sense of impedance, if not obstruction. The Justice Department felt that they had to go to the Deputy Attorney General and have him make a phone call to the White House because they felt there was a sense of at least impedance, if not obstruction.

The secretaries in the White House who testified before us, Ms. Gorham and Ms. Tripp. Ms. Gorham said she had a grilling by Mr. Nussbaum. She was asked specifically if it was the same kind of thing that Mr. Chertoff had been giving a witness here, and she said yes, it's exactly the same kind of thing. The slamming of doors that they testified to, people coming and going. They made a point of it. That struck me, that she didn't say she went into his office and closed the doors. It was slammed the door, and then he came out and he went in and slammed the door again.

As they were apparently trying to get a little relief from this atmosphere, they engaged in an electronic mail exchange, which I'm sure they wish they had not in terms of it's now being made public, but it's been made public; it's part of this record. The one referred to a slapstick comedy return and the other said yeah, the Three Stooges.

I don't think they were necessarily characterizing what was going on so much as they were seeking some kind of, among themselves, relief from an atmosphere that was clearly highly charged and went beyond, if I may, Mr. Sloan, grief. I asked Ms. Gorham if this was an atmosphere of paranoia, and she said she didn't feel paranoia, Senator, the strong implication being that she saw paranoia elsewhere.

The Park Police, in our questioning of them, said they saw a tremendous sense of spin control. Mr. Heymann yesterday; it's reported in this morning's Washington Post: "You have to wonder"—direct quote—"You have to wonder in any such situation whether it is just clumsiness and paranoia or whether there is some other

reason. My own experience is never underestimate clumsiness and paranoia."

This is not an isolated incident. It cuts across several agencies of the U.S. Government and into the White House staff itself as reported by career civil servants who have no axe to grind. Mr. Sloan, you do not remember Mr. Spafford's conversation, but Mr. Spafford's conversation comports completely with Ms. Gorham's, who said she saw something yellow at the bottom of that brief bag along with a folder. She obviously talked about it because Ms. Tripp asked her about the yellow stickies at the bottom of the briefcase; but you don't remember that even though Mr. Spafford's statement is very clear, very specific, very vivid. You don't remember about the typewriter even though Ms. Tripp's recollection is very clear, very detailed, and very vivid, and all of these people from all of these places are reinforcing the sense Mr. Heymann is talking about of paranoia.

Now, my basic question is what was the issue here? What is it that you were trying to make sure nobody saw, whether it was somebody from the Park Police or somebody from the Justice Department or, from Mr. Nussbaum's case, even a White House secretary where he grilled her again and again? What did you see? What is it that you didn't want any of these people from any of these agencies anywhere to see? What was the issue?

Mr. Neuwirth, we'll start with you.

Mr. NEUWIRTH. All of the conversations that I participated in about Mr. Foster's office concerned how best to accommodate two concerns that all of the people in the conversations thought were legitimate. On the one hand, the need to investigate Mr. Foster's death, and on the other hand, the concern that there could be a waiver of privileges that could attach to the materials in Mr. Foster's office.

Senator BENNETT. Mr. Sloan.

Mr. SLOAN. In answer to your question, Senator Bennett, nothing. There was nothing that was some specific item that people were trying to keep from other people, is my recollection of the events.

Senator BENNETT. Having listened to my summary of what I've seen in these hearings, do you have any comment to make? Am I completely wrong? Have I missed the whole atmosphere absolutely? Or was there indeed some sense on the part of the Counsel's Office and people connected with the First Lady, Maggie Williams, Susan Thomases, et cetera working together to create this us-and-them atmosphere which all of these agencies felt, or were they all mistaken?

Mr. SLOAN. I don't recall an atmosphere of paranoia. That's not how I would describe it. Now, you are talking about how these agencies felt. Well, the reason the points of disagreement are all out in the open in terms of what were points of disagreements between the Park Police, the Justice Department, and the White House——

Senator BENNETT. I don't want to get into this "points of disagreement." I am talking about the human feeling that a whole series of human beings of various agencies, various ages, various genders all felt when they dealt with people from the White House

Counsel's Office. I'm not talking about a specific agreement on the specific issue.

Mr. SLOAN. Senator Bennett, the reason I bring that up is I think to the extent that there were feelings, at least some of the feelings on the part of the Park Police or the Justice Department related to the specific items that have been talked about. So I mean, I think those are the issues.

I also think—as I indicated in my answer to Senator Kerry, I think there were genuine misunderstandings at the time, and those are always unfortunate. I don't mean to minimize them. It's always possible if you had taken more time and explained something to somebody, whether a secretary or Park Policeman or an FBI agent or Justice Department attorney, some of the misunderstandings could have been avoided.

It's also possible that there are unintentional misunderstandings. When I was giving examples to Senator Kerry, there's another example that comes to mind of a misunderstanding where there was an interview of one of the White House secretaries that the Park Police and FBI undertook which I was present at, and Mr. Nussbaum on July 21 had said that the Park Police and the FBI were going to come for the interviews. I think it was 9 a.m. the next morning. At 9 a.m. the Park Police and FBI showed up. Mr. Nussbaum wasn't in the office. The interviews started in any case.

At around 9:30 or 9:45 a.m., some period of time, Mr. Nussbaum came into the room where the interview was going on and he said is everything OK in here. What I took him to be saying was I'm sorry I wasn't here when you got here; is there anything you need; let us know if there's anything you need. I was stunned weeks later to learn in the press that apparently somebody in the Park Police felt that that was some intimidating gesture by Mr. Nussbaum. I cite that as an example of a misunderstanding, and having sat through that—I don't doubt that's how the person viewed it, but——

Senator BENNETT. Frankly, I keep coming back primarily to the two women who sat here and described the atmosphere in a circumstance where members of the White House Counsel probably felt they were not being observed. There was nobody from another agency there, and there's frantic coming and going and grilling and interrogating and slamming of doors and demanding for a typewriter, a typewriter that will be taken in the office—the obvious implication being we can't share anything we're going to type with anybody else. We're going to type ourselves, in the office; can you get us a typewriter. Well, no, we can't really without tearing up the rug. Well, why can't we take one of these. All of this kind of thing. You don't recall that, and I'll accept the fact that you don't recall it in good faith.

But I tell you in good faith I do not believe Ms. Tripp made it up. I do not believe that was an invention. It fits with everything else for which we have records, their E-mail primary among them. Maybe you just missed it, but everybody who dealt with the White House Counsel's Office came away with a misunderstanding, to use your word, but with the conviction that something was going on there that bordered on the paranoia. That was true of your own

support staff. That was true of people from other Government agencies. That was true of the Justice Department.

I think that's one of the reasons we're here today because of the basic question Mr. Heymann asked from his position: Bernie, are you hiding something? When I think of Ms. Gorham and her seeing yellow in the briefcase, being very firm about it, repeating it to Ms. Tripp so that she knew about it. She even knew the form it came in, yellow little stickies, which is a good simile for the torn-up pieces of the note for someone who hasn't seen it. The White House Counsel says no, nobody else saw it until Mr. Neuwirth happened to tip the thing on its side.

The statement, yeah, we'll deal with that later, and then nobody remembers Bernie having taken that position. There is an atmosphere that is clearly described here that leads an outside observer to believe that whether it was either clumsiness or paranoia, the White House Counsel's Office was acting as if they were trying to hide something.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Sloan, Mr. Neuwirth, I want to followup on that by asking you about the general atmosphere in the sense of the emotional state that existed. Some have suggested that since this impacted so directly on the White House Counsel's Office that the coordinating of the inquiry afterwards should have been done outside of the office, so to speak. Mr. Neuwirth, in your deposition you spoke about Mr. Nussbaum speaking at a gathering in 450 of the Old Executive Office Building for the White House staff. "The President also spoke. I think Mr. Nussbaum cried at the end of his talk there to the White House staff." When was that meeting?

Mr. NEUWIRTH. I think it was either in the very late morning or very early afternoon the day after Mr. Foster died, the 21st.

Senator SARBANES. Were you there, Mr. Sloan?

Mr. SLOAN. Yes, sir.

Senator SARBANES. What's your recollection of that meeting and about Mr. Nussbaum's emotional state?

Mr. SLOAN. I remember that Mr. Nussbaum was very overcome with emotion, as was everybody in the room, but I remember as Mr. Nussbaum was speaking, his voice repeatedly quivered with emotion. He had to catch himself because he seemed to be crying, and it was quite an emotional statement.

Senator SARBANES. Now, while this very meeting was going on, the Park Service investigators were waiting around, I take it, somewhere, waiting to start their investigation and apparently getting angrier and angrier because they were cooling their heels. Is that your understanding?

Mr. SLOAN. That's my understanding.

Senator SARBANES. Let me put it to the two of you. You're Associate Counsels. Were you able to function in an entirely normal and rational and clear-minded way during this period, or were you also impacted by the emotion connected with it?

Mr. SLOAN. There's no question that I was very greatly impacted by the emotions of the time.

Senator SARBANES. Did you go to the funeral?

Mr. SLOAN. Yes, sir.

Senator SARBANES. On the Friday?
Mr. SLOAN. Yes, sir.
Senator SARBANES. Mr. Neuwirth, did you go to the funeral?
Mr. NEUWIRTH. Yes, Senator, I did.
Senator SARBANES. Did you come back into the office over the weekend?
Mr. SLOAN. No, Senator, I did not.
Senator SARBANES. How drained and tired were people at the end of the 22nd?
Mr. SLOAN. Extremely drained and tired, Senator.
Senator SARBANES. The next day you left for the funeral?
Mr. SLOAN. We had to leave early for the funeral, yes.
Senator SARBANES. Now, you came back into the office on the Monday?
Mr. SLOAN. Yes, sir.
Senator SARBANES. That's when you began this—I guess it was Mr. Neuwirth who began then—you came back in the office on the Monday, then?
Mr. NEUWIRTH. That's correct.
Senator SARBANES. And began the process of inventorying—that's when you laid aside additional matters that were clearly personal to the Fosters?
Mr. NEUWIRTH. That's correct.
Senator SARBANES. That's when the briefcase, when you dealt with the briefcase as well, and the pieces of paper?
Mr. NEUWIRTH. Yes, Senator.
Senator SARBANES. That was on the Monday?
Mr. NEUWIRTH. Yes, sir.
Senator SARBANES. Which, I guess, was effectively your first working day since the previous Thursday—let me pursue that for a minute now, as I think about it. The day when Nussbaum did the review and things were assembled and things were put on the piles and so forth, that was on Thursday afternoon; is that correct?
Mr. NEUWIRTH. Yes, Senator.
Senator SARBANES. The next morning, I take it, you left and went to Little Rock for the funeral?
Mr. NEUWIRTH. That's correct.
Senator SARBANES. Then we had Saturday and Sunday. In fact, were people told, in effect, to take the weekend off, or did you just do it?
Mr. NEUWIRTH. Mr. Nussbaum specifically told me at least to take the weekend off.
Senator SARBANES. So you came in on Monday?
Mr. NEUWIRTH. That's correct.
Senator SARBANES. And then picked up from where things had been left on Thursday afternoon; is that correct?
Mr. NEUWIRTH. On Monday morning, I began the inventory that Mr. Nussbaum had asked me to do.
Senator SARBANES. OK. I yield the rest of my time to Mr. Ben-Veniste.
Mr. BEN-VENISTE. Thank you, Senator Sarbanes.
Let me go over a couple of things that I think may not be clear in the record. In terms of the people who have indicated that there was an agreement, according to my understanding of the record at

this point, neither FBI Agent Salter nor Captain Hume indicated that they had any recollection that a firm agreement had been reached. Mr. Heymann had testified as to his recollection that there was one, as did Mr. Adams.

So of all of the people who were in the room, including Detective Markland and others, including Secret Service Agent Flynn, it is my recollection that the evidence up to this point indicates that the Department of Justice personnel were clear in their recollection. We have Mr. Margolis' recollection derivatively from Mr. Heymann and from Mr. Adams. But we have your recollection on the other side of that.

Without making any judgments at this point, Mr. Chairman, that is my recollection of the evidence up to this point. The question about who had come on to this list of suspects for who might have left fingerprints on the note was explained yesterday by Louis Hupp, who was the fingerprint analyst who actually performed the initial work of trying to see whether there were any latent fingerprints that could be identified on Mr. Foster's note. My recollection is that the list was derived of people who were known to have handled the note, Mr. Foster and others.

Mr. Neuwirth, was there any point at which, in your presence, you saw the First Lady, Hillary Clinton, handle the scraps of paper?

Mr. NEUWIRTH. I don't think she did.

Mr. BEN-VENISTE. So that in terms of the identification of persons who had handled the note, Mrs. Clinton's name would not necessarily be relevant or appear. Is that your understanding?

Mr. NEUWIRTH. Yes, sir.

Mr. BEN-VENISTE. Let me ask you, if we could put on the screen the drawing produced by the Majority staff of Mr. Foster's office. Thank you. Does this more or less comport with your recollection, gentlemen, of the arrangement in Mr. Foster's office as of July 20, 1993? If it does not, would you point out any differences?

Mr. NEUWIRTH. It comports except that I believe in between the credenza on the top and the sofa there was a chair that matched the sofa, and I believe there was also a coffee table in front of the sofa.

Mr. BEN-VENISTE. There was a coffee table in front of the sofa?

Mr. NEUWIRTH. That's my best recollection.

Mr. BEN-VENISTE. Now, let me ask that Markland Exhibit 1 be put up on the screen, which was the sketch Sergeant Markland provided during his deposition and which was utilized here. Gentlemen, can you see that on the screen?

Mr. SLOAN. Yes, sir.

Mr. BEN-VENISTE. Now, that has the coffee table drawn in, but it seems to me somewhat more elongated than the sketch that we just saw as produced by our interior designer consultant. Would that be your recollection?

Mr. NEUWIRTH. That's my recollection of where it was located.

Mr. BEN-VENISTE. On the 22nd of July when the search was conducted, can you tell us where Mr. Margolis and Mr. Adams were seated?

Mr. NEUWIRTH. They were seated in chairs that had been placed in front of the desk, that is on the side of the desk where the sofa is located.

Mr. BEN-VENISTE. If the Committee's dot could be summoned from wherever the dot lives, the dotmeister—oh, we have an arrow today. OK. Could you tell us by manipulating that arrow where they would be seated?

Mr. NEUWIRTH. Am I able to manipulate it?

Mr. BEN-VENISTE. You can verbally tell the arrow where to go.

Mr. NEUWIRTH. I would move the arrow to my left.

Mr. BEN-VENISTE. Stage left.

Mr. NEUWIRTH. I would say that was the general area. I'm not sure exactly how close the chairs were to the desk.

Mr. BEN-VENISTE. If we could leave the dot there. Where was Mr. Adams seated?

Mr. NEUWIRTH. There were two chairs where the original arrow was located, and I don't know whether——

Mr. BEN-VENISTE. They weren't stacked one on top of another, so were they seated next to each other?

Mr. NEUWIRTH. In the scale of the drawing, the arrow is large enough to cover the two chairs, so if you want to put the other one next to it—that was my understanding of where the chairs were.

Mr. BEN-VENISTE. They were sitting close to each other, and they were able to confer during the meeting?

Mr. NEUWIRTH. That's correct.

Mr. BEN-VENISTE. So when Mr. Nussbaum took the briefcase—do you recall when Mr. Nussbaum removed files from the briefcase? Is that something which you have a recollection of, Mr. Neuwirth?

Mr. NEUWIRTH. I'm not sure I was in the room when Mr. Nussbaum reviewed whatever materials were in the brief bag, but I was very—it was my sense that was included in other materials that were reviewed.

Mr. BEN-VENISTE. Mr. Sloan, were you in the room?

Mr. SLOAN. Yes, sir.

Mr. BEN-VENISTE. What do you recall about how Mr. Nussbaum removed the files from the briefcase, if anything?

Mr. SLOAN. As I indicated before, my limited recollection as I sit here is he took some files out of the briefcase.

Mr. BEN-VENISTE. The testimony that we have heard here is that he reached down and removed files, either by one or two movements to the briefcase, and then pushed the briefcase back against the wall. Does that comport with your recollection?

Mr. SLOAN. Well, I don't recall the details, but I don't recall anything inconsistent with that, either.

Mr. BEN-VENISTE. Do you know whether Mr. Nussbaum is right-handed or left-handed?

Mr. SLOAN. I don't know offhand, sir.

Mr. BEN-VENISTE. And do you know whether the briefcase was pushed to Mr. Nussbaum's right or to his left?

Mr. SLOAN. I don't know.

Mr. NEUWIRTH. Mr. Chairman, could I request for a 1-minute break?

The CHAIRMAN. Yes, I think this is a good time and when we resume, Senator Bond will take it up. We'll take a 2-minute break.

Mr. NEUWIRTH. I'm sorry; I apologize.

The CHAIRMAN. You don't have to—I referred to it as the library last time and someone thought it was funny, but we can take a break.

Mr. BEN-VENISTE. If we could somehow make a duplicate and keep these identifying characteristics there, I think that may be of help to us.

The CHAIRMAN. In other words, approximately where the two arrows are, we'll put two X's permanently to indicate Mr. Neuwirth having indicated that that's where the chairs were, approximately, using this drawing.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. I'm going to request the operator make note where those arrows are, put your hand over there now, put two little dots there, and you can put two X's there. I would do it now. I would take a pencil, right where the arrows are—that's it. A little dot there, a little dot next to it. Now the other arrow. See where the other arrow is? Let's see it now. Remove the arrows. OK. That will be permanent, now you can take the arrows out. That's it.

Mr. BEN-VENISTE. Obviously, Mr. Chairman, to scale, they may be a little bigger in terms of that.

The CHAIRMAN. We know this is an approximation based on Officer Markland's description, and it may be a little short or a little long on one side or the other. The table may be a little long.

Mr. BEN-VENISTE. Maybe we'll get a scale drawing so that we don't have to guess about this. I would make a request. Mr. Chertoff and I perhaps could make a request.

The CHAIRMAN. If you and Mr. Chertoff could come up with a manner to devise that, that would be fine. While we're waiting for Mr. Neuwirth, I'm going to take this opportunity to say that we have made a request to the White House relating to a series of telephone calls that went into the First Lady's office.

The question was whether or not Maggie Williams received—whether she remembered getting one of these calls from Susan Thomases, and her assistant indicated that she does not have a recollection of receiving any. There was a possible conjecture, notwithstanding; in some cases she spoke for 3 minutes, 6 minutes, 11 minutes. We have that. The record will accurately reflect this. Senator Mack asked, who were these conversations with.

There was a proposition put forth that perhaps there were other people in the office. I asked if we could have a list of the people who were working at that time, so we could make preparations to examine them. I would hope we could do this, and I'm addressing this to the people who represent the White House, in a cooperative manner. If we can't, I would like to know so we can take the appropriate steps to bring that about. I don't want to say more.

Senator SARBANES. Mr. Chairman, could I ask, I take it it's your intention to complete this panel today?

The CHAIRMAN. I think if at all possible, if all of the Members have—I don't see any reason why we should not be able to. So I would like to keep it going. Otherwise, we will be forced to bring

back Mr. Sloan and Mr. Neuwirth, I don't see any need to do that. I would like to conclude today.

Senator SARBANES. I would think we should be able to do that. I don't know that we have that much more on our side. I don't know how much you have on your side.

The CHAIRMAN. We have a number of Senators—we're going to Senator Bond, Senator Faircloth. I know Senator Grams wants to touch on something, and Mr. Chertoff, but we have been moving fairly——

Senator SARBANES. We need to move it along here, I guess.

The CHAIRMAN. Now we have Mr. Sloan. Can you start now, Senator Bond?

Senator BOND. Thank you very much, Mr. Chairman.

Mr. BEN-VENISTE. Mr. Chairman, if I could complete this on the diagram—I think it would be helpful so we have this——

The CHAIRMAN. For the purposes of completing this, and then we'll go to Senator Bond.

Mr. BEN-VENISTE. This is just from Mr. Adams' deposition on page 65:

Question: When you got into Mr. Foster's office, where did you all sit?
Answer: Bernie sat behind Vincent Foster's desk and his two Associate Counsels stood on either side of him. The rest of us stood or sat in chairs arranged in a rough semicircle or possibly as a group facing the front of the desk.

Does that comport, Mr. Neuwirth, with your——

Senator SARBANES. He's not listening.

[Witness conferred with counsel.]

Mr. BEN-VENISTE. Does that comport with your recollection that the individuals from the Justice Department and law enforcement were arranged in a rough semicircle as a group facing the front of the desk?

Mr. NEUWIRTH. I believe that that's correct, that they were arranged behind Mr. Adams and Mr. Margolis.

Mr. BEN-VENISTE. OK. Thank you.

The CHAIRMAN. Thank you.

Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Neuwirth, I gather from your testimony it's a very demanding job being counsel in the White House. Probably not as bad as being before a Congressional Committee, but from what I understand, this is a job that requires very long hours, and you have a tremendous workload. Is that fair?

Mr. NEUWIRTH. Yes, sir.

Senator BOND. I would imagine that in the day or two following Mr. Foster's tragic death, it was an even greater workload?

Mr. NEUWIRTH. It was a very large workload, yes.

Senator BOND. I have a problem, and maybe you can help me figure it out. Again, it's something that doesn't quite fit. You're an Associate White House Counsel. You spent over a half a day reading the names of folders and writing them down on a piece of paper. Now, isn't that a clerical or secretarial job?

Mr. NEUWIRTH. I assume you're referring to Monday the 26th.

Senator BOND. Monday the 26th.

Mr. NEUWIRTH. On that day, I began the process at approximately 10 a.m. I found the note at approximately 4 p.m. I had

taken a break in the middle of the process of going through the inventory on at least one occasion for lunch and, I believe, to attend to some other matters, and so I don't believe I used the full 6 hours to do the inventory.

Senator BOND. But maintaining files in as efficient an office as the White House Counsel, I would assume would be a secretarial or clerical job; would it not?

Mr. NEUWIRTH. What I can tell you, Senator, my understanding of why Mr. Nussbaum asked me to do it is that I believed he wanted to inventory for the purpose of determining who in the office could pick up ongoing matters that Mr. Foster had been working on, and I think that he assumed that you would need to be able to make a judgment about what the substantive subject of the file was in order to prepare that inventory.

Senator BOND. Looking at the notes that you prepared, that goes down, just has Armstrong Michael Beaty membership, calendars clearance procedures, that's the kind of thing that a clerical person could do, is it not?

Mr. NEUWIRTH. I don't disagree that a clerical person might have been able to prepare an inventory of the type I prepared.

Senator BOND. But you testified in your deposition that you never really looked at the contents of the files, so you weren't making an assessment of to whom the files should be assigned?

Mr. NEUWIRTH. Oh, that's correct, Senator.

Senator BOND. You looked at all the files in Mr. Foster's office?

Mr. NEUWIRTH. I looked at all the files that were there that day, yes.

Senator BOND. Ms. Gorham testified that she made an index for each of the file drawers. Did you find an index in any of the file drawers?

Mr. NEUWIRTH. I marked on that document that I prepared that day every folder that I saw during my review. I don't have the list in front of me, so I'm not in a position to answer.

Senator BOND. Did you find something that was a separate index, not a folder?

Mr. NEUWIRTH. I believe there may be reference to an index that's included in my description of the items in Mr. Foster's desk, but again, I don't have a copy of this document in front of me right now.

Senator BOND. There's one that says, "Bush file index"?

Mr. NEUWIRTH. I actually think I'm referring to something else. If you look at the second page, the page marked Z2, item number 35——

Senator BOND. Personal—what's that, personal file list?

Mr. NEUWIRTH. Yes. I don't know at this point what that document is. I'm just responding to your question of whether there was any document that was a file list or any reference to a file list on here.

Senator BOND. These were lists of files, and you don't recall whether that was a separate index as opposed to a folder? Or do you recall? Was that a folder entitled "personal file list"?

Mr. NEUWIRTH. No, you're correct, Senator; I don't recall which it is.

Senator BOND. Outside of this, what you've written down here, you did not see any of the indices that Ms. Gorham told us that she prepared for all of the file cabinets?

Mr. NEUWIRTH. I am not familiar with what Ms. Gorham described. What I can tell you is that this list includes everything I saw.

Senator BOND. So we can—taking her testimony and your testimony, not only was one index—did one index mysteriously disappear, but every index for each file drawer or file cabinet disappeared. You did not, outside of what you've listed, you did not find one?

Mr. NEUWIRTH. Again, since I don't know exactly what it is Ms. Gorham described, I don't know whether I saw it.

Senator BOND. I asked you——

Mr. NEUWIRTH. But you are correct——

Senator BOND. You did not see——

Mr. NEUWIRTH. I did not see indices that would not have been included in the files I've listed here.

Senator BOND. Mr. Chairman, I think this, again—makes this more and more curious. If all of the indices disappeared, then that gets pushing the accident or an oversight a little bit farther. You did not think to ask Ms. Gorham—well, you did ask Ms. Gorham for some help, did you not?

Mr. NEUWIRTH. I asked her for assistance with respect to Mr. Foster's computer.

Senator BOND. You did not ask her if she had an index or list of all the files?

Mr. NEUWIRTH. I don't believe that I did.

Senator BOND. She was—apparently a very competent assistant secretary. You did not think to ask if she had already done the work that you were—on which you were about to embark, that took you 6 hours?

Mr. NEUWIRTH. You are correct that I did not think to ask that, and the reason I didn't think to ask it is because Mr. Nussbaum asked me to make the inventory myself.

Senator BOND. Again, we'll have an opportunity to question Mr. Nussbaum on his assignment of responsibilities, but that does not—that strikes me as a little out of the ordinary. You mentioned something about you didn't want to waive any privileges wherein to the files. That was one of your concerns?

Mr. NEUWIRTH. That was one of the concerns that was a factor in all of the discussions I participated in.

Senator BOND. So you knew that if there were—you could maintain the lawyer-client privilege if there were matters which truly should be within that privilege so long as a lawyer or counsel held on to those files; is that correct?

Mr. NEUWIRTH. I think the concern was that under these circumstances, allowing law enforcement officials who were investigating something at the White House to have access to the documents could give rise to a waiver of applicable privileges.

Senator BOND. Wouldn't giving access to nonlawyers who were not counsel waive that privilege as well? If you turned those documents over to the Chief of Staff who was not acting as counsel, isn't that a waiver?

Mr. NEUWIRTH. I think it depends on the circumstances in which the information is shared because attorneys can have communications on behalf of their clients that don't give rise to a waiver. Again, each circumstance has to be assessed on a case-by-case basis.

Senator BOND. Mr. Neuwirth, you are an attorney. You know why we're interested in these files and these indices. Can you tell us, as an attorney making an investigation, why you would want to see an index or a complete listing of files if you were conducting an investigation? Why would you want to have an index?

Mr. NEUWIRTH. Again, I don't know the particular matter that would be being investigated under these circumstances to know the reason why I would want to use an index. I am happy to answer your question. I am not sure——

Senator BOND. If you have a full and complete index, then you know what's in the files. If you were the representative of the RTC, for example, or the Department of Justice, and you were conducting an investigation that might have touched on one of these matters, the first thing that you would seek would be an index to determine whether any of the files kept in that office might possibly have relevance to the subject of the investigation; is that correct?

Mr. NEUWIRTH. I think you're certainly correct that if, as an investigator, I need to know the content of all of the files in a particular location, it would be helpful to have an index that describes those contents.

Senator BOND. You've made the index of the materials that were in Mr. Foster's office. Why did you not go on and complete the index and make a full listing by reviewing the documents that had been removed from Mr. Foster's office?

Mr. NEUWIRTH. I think the assumption in that question is that I knew on Monday the 26th that documents had been removed from Mr. Foster's office. And while I had an understanding by that time that materials from Mr. Foster's office would be going to Williams & Connolly, I'm not sure that I had a sense on that day that anything had actually been taken out of Mr. Foster's office at that time.

Senator BOND. Mr. Nussbaum did not indicate to you when he told you to make that index that there were any other files not in Mr. Foster's office?

Mr. NEUWIRTH. He did not, and the task I was given was to make an index of what was in the office.

Senator BOND. Let me ask that we put up very briefly the Z1108—excuse me, Z1118 on the Elmo. Now, this is what we have been told—this is actually—it's dated July 22, 1993, and if you'll take that down, that shows redacted, redacted.

The next page that has anything on it in that submission was Z1123. Would you put that up, please? All right. Now, this is what we have been told is consistent with what Ms. Gorham had prepared. Have you ever seen that list prior to this proceeding?

Mr. NEUWIRTH. No, I have not.

Senator BOND. May I ask that you put up also Z1104? Just to show you, that's another copy of an index in question, and then Z1109, which is the last page in that. This is the one that Ms. Gorham said resembled or appears to be similar to the first index, but

it has been altered. Now, did you print these documents, or did you know from your position in the White House Counsel's Office who printed these documents?

Mr. NEUWIRTH. No, sir.

Senator BOND. Did you request anybody to print the documents?

Mr. NEUWIRTH. No, sir, I did not.

Senator BOND. Mr. Sloan, same question: Did you print these documents?

Mr. SLOAN. No, sir.

Senator BOND. Did you request anyone to print the documents?

Mr. SLOAN. No, sir.

Senator BOND. Did you know who did?

Mr. SLOAN. No, sir.

Senator BOND. Mr. Neuwirth, did you alter any of these documents?

Mr. NEUWIRTH. I didn't alter them, and I've never seen them before you've shown them to me.

Senator BOND. Did you know anyone who did alter them or have access to those documents?

Mr. NEUWIRTH. No, I do not.

Senator BOND. Mr. Sloan, did you alter those documents?

Mr. SLOAN. No, sir.

Senator BOND. Or ask anyone to?

Mr. SLOAN. No, sir.

Senator BOND. Or know anyone who might have done so?

Mr. SLOAN. No, sir.

Senator BOND. Now, Mr. Neuwirth, your listing does not show a Whitewater file?

Mr. NEUWIRTH. That's correct.

Senator BOND. It does show Armstrong. Armstrong, I gather, refers to the case that you have to keep files in the White House. Is that what that Armstrong case refers to?

Mr. NEUWIRTH. That's a case which said—the issue in the case when I worked on it was whether electronic mail can be a form of record that needs to be preserved under the Federal Records Act.

Senator BOND. The answer is that it is; is that correct?

Mr. NEUWIRTH. That's correct, that it can be.

Senator BOND. We appropriated $13 million so you could do that in 1993?

Mr. NEUWIRTH. Yes, the White House did it voluntarily. The case didn't actually apply to the Presidential Records Act. We voluntarily assumed that we would do it.

Senator BOND. We are still seeking those documents, and I thank you for clarifying that.

Senator Bennett.

Senator BENNETT. I hate to intrude, but I have one quick question if I could be indulged. You said, Mr. Neuwirth, that you wrote down every folder that you saw. A Whitewater folder is not on your inventory?

Mr. NEUWIRTH. I do not see a folder on my inventory labeled "Whitewater."

Senator BENNETT. Ms. Gorham testified that there was a Whitewater file in Vince Foster's office. It is not on your inventory; it is in the documents that were furnished to the law firm of Williams

& Connolly. Would you accept it would be a fair conclusion from that that it was in the documents that were carried to the residence?

Mr. NEUWIRTH. The only conclusion I can reach is that it was not one of the files that was in the office when I did the inventory.

Senator BENNETT. Thank you.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

First of all, let me come back to the point that Senator Bond was trying to raise with you, Mr. Neuwirth, if I can. And that is the reason you may have been asked to make an inventory of the contents of Mr. Foster's office. Is it not correct there were matters in there that were obviously going to be reassigned to other people in the White House Counsel's Office?

Mr. NEUWIRTH. That is correct.

Senator DODD. And decisions in breaking up those files—this was not merely a question of not having, with all due respect to a secretary make those decisions, but rather it would be highly—in fact, I suspect we might have people raising questions here had a secretary performed that function and not another attorney within the Counsel's Office. Am I not correct in that?

Mr. NEUWIRTH. That's my understanding of why Mr. Nussbaum asked me to do it, yes.

Senator DODD. It was because of that particular reassignment issue and that these were sensitive matters and that decisions had to be made as to which lawyers might get the work?

Mr. NEUWIRTH. Certainly the reassignment issue, yes.

Senator DODD. Second, if I can, a lot has been made, obviously, of the note, the torn-up note that was found in the bottom of Mr. Foster's briefcase, and we've all now had an opportunity to look over this note. First of all, it's been said by virtually everyone that knew Vince Foster that he was someone of a significant and high degree of integrity, honesty, and good character. Do either of you have any questions about those characterizations at all in your working and personal relationship with Vince Foster?

Mr. SLOAN. No, sir, Senator.

Senator DODD. You would agree with those characterizations?

Mr. SLOAN. Absolutely.

Senator DODD. Mr. Neuwirth.

Mr. NEUWIRTH. Yes, I would agree.

Senator DODD. Mr. Neuwirth, as you put together, sitting there on the 26th, as I gathered here, and you discovered this note and you begin to reassemble it, you look at this note—as you read the note for the first time, is there a feeling you have at the point you're looking at a suicide note, or is it more a question of a person's expressions of how they felt about the White House, how they felt about various publications, political parties, and others? What is your reaction when you see this note? Do you say I think we've found a suicide note, or do you think you found a rambling note of a person who is obviously disturbed by a number of things, things that were bothering him?

Mr. NEUWIRTH. I felt we had found a note that may very well have been describing what was on Mr. Foster's mind when he

killed himself, but it was not a note that was the traditional type of suicide note that made reference to death or committing suicide. It was also undated, so it wasn't really possible to assess at what point he had written it.

Senator DODD. Did anyone who also looked at that note at that time have any different opinion about the note than you did?

Mr. NEUWIRTH. I don't think anybody reached a different conclusion. I think people who saw the note made reference to death and asked the question is this a suicide note.

Senator DODD. Was it the conclusion that this was probably not a suicide note but what you described as a person's state of mind?

Mr. NEUWIRTH. I wasn't trying to suggest that I had ruled out this was a suicide note, but I agree with you there was an agreement that this was certainly a state of Mr. Foster's state of mind at some point that seemed likely, perhaps, to have been contemporaneous with when he died.

Senator DODD. Of course, the only references that Mr. Foster makes in the note to the White House, if I may quote from the note, are in the third paragraph, in the third from the bottom paragraph. Vince Foster says in this note, "No one in the White House, to my knowledge, violated any law or standard of conduct including any action of the Travel Office. There's no intent to benefit any individual or specific group." Then further down in the note, "The public will never believe the innocence of the Clintons and their loyal staff."

So there's nothing in this note, whatever one may interpret it to be, that in any way implicates the White House or the First Family in any kind of illegal or improper or unethical behavior; in fact, quite the contrary. Is that true?

Mr. NEUWIRTH. Yes, sir.

Senator DODD. In fact, to the extent there is any accusations, they are pointed to—those accusations referred to The Wall Street Journal and the press, the GOP, the Usher's Office, those seem to be the targets of Mr. Foster's concern.

Mr. NEUWIRTH. That's correct, Senator.

Senator DODD. Thank you, Mr. Chairman.

I'll yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Sloan, did there come a time when you participated in the review by the police of any of the materials which they had identified on the 22nd as being of interest to them?

Mr. SLOAN. Yes.

Mr. BEN-VENISTE. Would you tell us when that was?

Mr. SLOAN. On July 30, the Park Police came to my office and reviewed the materials that had been set aside for them.

Mr. BEN-VENISTE. Would you tell us the circumstances of how they came on the 30th?

Mr. SLOAN. Mr. Nussbaum had told me to make them available to them. I don't recall whether Mr. Nussbaum had a conversation with the Park Police or whether I was the one who had the conversation with them, but Mr. Nussbaum told me to make the documents available to the Park Police.

Mr. BEN-VENISTE. Was it that the Park Police had called and asked what about those documents, or was it you who initiated the call?

Mr. SLOAN. I'm not certain. I don't remember exactly. I remember Mr. Nussbaum telling me to make them available to the Park Police, and then arrangements were made for them to come, but I don't know what prompted Mr. Nussbaum to say that.

Mr. BEN-VENISTE. Did they review those materials at your office?

Mr. SLOAN. Yes, sir.

Mr. BEN-VENISTE. How long did they spend reviewing the materials?

Mr. SLOAN. A very rough estimate would be 30 minutes, but that could be considerably off.

Mr. BEN-VENISTE. Do you recall who from the Park Police came?

Mr. SLOAN. I believe it was Captain Hume, and I think that he was accompanied by somebody, but I'm not sure who.

Mr. BEN-VENISTE. At the conclusion of the review of the materials which had been set aside on the 22nd that took place in your office on the 30th, were there any materials that either Captain Hume or the other individual from the Park Police requested to see?

Mr. SLOAN. No.

Mr. BEN-VENISTE. Was it your impression that the police had seen everything that they had requested as of that time?

Mr. SLOAN. Yes, sir.

Mr. BEN-VENISTE. Were there additional materials that were sent to the Foster family attorney subsequent to the 22nd?

Mr. SLOAN. Let's see—well, subsequent to the 22nd?

Mr. BEN-VENISTE. Yes?

Mr. SLOAN. I'm familiar with the fact that Mr. Neuwirth was boxing things up on the 26th, so based on that, the answer would be yes.

Mr. BEN-VENISTE. Was it your understanding that the police were also permitted to see whatever it was that they wished to see from the Foster family attorneys?

Mr. SLOAN. At the time I didn't have an understanding of that one way or the other. I just knew they were going to deal with the Foster family attorney with respect to those items.

Mr. BEN-VENISTE. We've had testimony from Sergeant Markland and Captain Hume and, indeed, Chief Langston, who testified that they reviewed materials at Mr. Hamilton's office and that they were satisfied that they had reviewed everything that they had requested. Does that comport with your recollection of events?

Mr. SLOAN. I don't know anything inconsistent with that.

Mr. BEN-VENISTE. Mr. Neuwirth.

Mr. NEUWIRTH. I'm not familiar with anything inconsistent with that.

Mr. BEN-VENISTE. With respect to the materials that you made available, Mr. Sloan, did you put any restrictions on whether they might copy anything that they wished to copy?

Mr. SLOAN. No, sir. They indicated a couple of things that they wanted to get copies of. I called Mr. Nussbaum to make sure it was OK for them to get copies of those, and he said yes, and they got copies of anything that they requested copies of.

Mr. BEN-VENISTE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Neuwirth, I have a number of questions, and simple yeses or noes would work fine for them. I have read your statement, and it strikes me, however, that you are stating this: You don't know precisely what Susan Thomases and/or Hillary Clinton told Bernie Nussbaum; is that right?

Mr. NEUWIRTH. I'm stating that I don't know what Susan Thomases told Mr. Nussbaum. I don't know if Mr. Nussbaum ever spoke to Mrs. Clinton about this.

Senator FAIRCLOTH. Do you remember that Bernie Nussbaum told you that he talked to Susan Thomases?

Mr. NEUWIRTH. Yes, sir.

Senator FAIRCLOTH. Do you remember that Hillary Clinton may have been mentioned in that conversation?

Mr. NEUWIRTH. In the conversation that I had with Mr. Nussbaum, yes.

Senator FAIRCLOTH. Do you remember that the conversation that Mr. Nussbaum had with Susan Thomases concerned something about Mr. Foster's office?

Mr. NEUWIRTH. Mr. Nussbaum told me that his conversation with Ms. Thomases concerned Mr. Foster's office, yes.

Senator FAIRCLOTH. Mr. Neuwirth, if Susan Thomases, a close friend of Mrs. Clinton, a New York lawyer, was calling Mr. Nussbaum about Vince Foster's office, it isn't likely it was for idle chatter. I think it was about who was going into Vince Foster's office and what was going to be looked at. Would you not agree with that?

Mr. NEUWIRTH. All I know is what Mr. Nussbaum told me about the conversation, beyond that, I'm not in a position to agree with you or disagree.

Senator FAIRCLOTH. I thank you for having a better memory than Ms. Thomases or Mr. Nussbaum, and certainly a better one than Maggie Williams.

I still contend, Mr. Chairman, at some point we need to get Mrs. Clinton here and see if her memory isn't better than any of them. Mr. Neuwirth, on the morning of July 22, Mr. Nussbaum along with yourself and a group of others entered Mr. Foster's office to search it; is that correct?

Mr. NEUWIRTH. That is not correct.

Senator FAIRCLOTH. That is not correct? It was afternoon.

Mr. NEUWIRTH. On the afternoon of the 22nd, that is when the review took place, and I participated in that review.

Senator FAIRCLOTH. We know from the testimony of the career law enforcement officers that accompanied you in the so-called search, that it was really a charade. You didn't allow anyone other than people from the White House Counsel's Office to see any documents in Mr. Foster's office; is that correct?

Mr. NEUWIRTH. I don't agree with your characterization of the review as a charade. It is correct that the process is one in which Mr. Nussbaum looked at the documents and no one else did.

Senator FAIRCLOTH. No one else did?

Mr. NEUWIRTH. Except——

Senator FAIRCLOTH. If this wasn't a facade, would you tell me what you had them there for, the police officers? What were they doing there if it wasn't window dressing?

Mr. NEUWIRTH. The purpose of the procedure——

Senator FAIRCLOTH. Mr. Markland said what was the purpose of them being there if they weren't going to see the papers?

Mr. NEUWIRTH. —the purpose of being there was to give them an opportunity to see where files were located, to give them a description of the files at a level of generality or specificity depending on the circumstances, and to provide them an opportunity to identify which files they would want to look at based on Mr. Nussbaum's description.

When I answered your question earlier, I had just wanted to add that I do believe that in a number of circumstances, there were documents that the investigators asked to look at and, at least, Mr. Margolis may have been shown one or two or even more of the documents.

Senator FAIRCLOTH. Maybe I don't understand how the White House works, but if they were not going to let them look at the document, if they're not going to let them go through and look at them, the law enforcement officers, what difference did it make where they were located?

Mr. NEUWIRTH. The purpose, as I understood it, of the review, Senator, was to give an opportunity, principally, to determine if there was a suicide note or extortion note or other document like that.

In reviewing the files in the office, Mr. Nussbaum advised the law enforcement officials that he did not see any document like that at the locations where he looked, and he also, in addition to that, gave them a description of the types of documents he was looking at so that the law enforcement officials could make a decision about whether they wanted to request an opportunity to review them. As I understand it, every document that they requested to look at, they were shown.

Senator FAIRCLOTH. Well, that same afternoon after the outsiders, the law enforcement people, went away, did you see Mr. Nussbaum and Mr. Sloan in Mr. Foster's office later that afternoon?

Mr. NEUWIRTH. Yes.

Senator FAIRCLOTH. What were they doing? Were they looking at documents?

Mr. NEUWIRTH. I don't know exactly what they were doing. I do know that they appeared to be looking at documents.

Senator FAIRCLOTH. Well, do you recall anything that was said between Mr. Sloan and Mr. Nussbaum while they were in or near Mr. Foster's office that afternoon?

Mr. NEUWIRTH. I think I saw them inside. I don't think I heard them say anything.

Senator FAIRCLOTH. Do you remember seeing Mr. Nussbaum talking to Maggie Williams that afternoon in the Counsel's Office?

Mr. NEUWIRTH. Yes, sir.

Senator FAIRCLOTH. Do you know what they said?

Mr. NEUWIRTH. No, I do not.

Senator FAIRCLOTH. Do you recall if the First Lady or Susan Thomases ever came into Vince Foster's office?

Mr. NEUWIRTH. At any time?

Senator FAIRCLOTH. Yeah, any time.

Mr. NEUWIRTH. I think I had seen the First Lady in Mr. Foster's office talking to him during the first 6½ months of the Clinton Administration at different points. I'm not sure I ever saw Ms. Thomases in Mr. Foster's office. I may have.

Senator FAIRCLOTH. Did Ms. Thomases ever come over into the suite following Mr. Foster's death?

Mr. NEUWIRTH. At any time?

Senator FAIRCLOTH. Yeah, after Foster's death.

Mr. NEUWIRTH. Up until the present?

Senator FAIRCLOTH. Well, I would think more recent than that, following the 5 or 6 weeks—3 or 4 weeks after—3 or 4 days——

Mr. NEUWIRTH. I don't think I ever saw her there in the 3 or 4 days following, but since I wasn't always there, I don't know whether she did or didn't.

Senator FAIRCLOTH. Have you ever discussed the events of the search of Mr. Foster's office with either Susan Thomases or Hillary Clinton?

Mr. NEUWIRTH. No, I have not.

Senator FAIRCLOTH. When the events occurred regarding the search of Mr. Foster's office, did you know who Susan Thomases was at the time? Did you know who this lady was before?

Mr. NEUWIRTH. As of July 22, I was very familiar with who she was.

Senator FAIRCLOTH. You knew who she was and her connection?

Mr. NEUWIRTH. Yes, sir.

Senator FAIRCLOTH. It was your understanding that she was one of Mrs. Clinton's best friends?

Mr. NEUWIRTH. I don't think I'm in a position to say that. I knew that she knew Mrs. Clinton well.

Senator FAIRCLOTH. You testified that Mr. Nussbaum told you that Susan Thomases had called him to relay her concern and Hillary Clinton's concern about people having—and I quote—"Unfettered access to Mr. Foster's office?"

Mr. NEUWIRTH. It was my understanding from Mr. Nussbaum that she expressed concern of that type during the call, yes.

Senator FAIRCLOTH. If you did not remember her or recognize her as one of Mrs. Clinton's closest friends, how would you have classified it? You say you had known her. What would have been your classification of her?

Mr. NEUWIRTH. You asked me if she was one of Mrs. Clinton's best friends. I don't know the list of Mrs. Clinton's best friends. I know she was a senior official in the campaign of 1992. I knew that she knew Mrs. Clinton very well. Beyond that, I can't characterize the nature of their friendship.

Senator FAIRCLOTH. To your knowledge, did Susan Thomases call the Counsel's Office on pretty much a regular basis, Mr. Foster's office?

Mr. NEUWIRTH. I don't know how frequently she spoke to people in the Counsel's Office.

Senator FAIRCLOTH. To your knowledge, was it an unusual event for Susan Thomases to make these calls to Bernie Nussbaum, or did they talk on a regular basis?

Mr. NEUWIRTH. I think they certainly talked at least from time to time because they knew each other very well.

Senator FAIRCLOTH. Mr. Sloan, did Mrs. Clinton ever discuss searching Vince Foster's office with you?

Mr. SLOAN. No, sir.

Senator FAIRCLOTH. Never discussed it?

Mr. SLOAN. No, sir.

Senator FAIRCLOTH. Mr. Neuwirth, was it ever your understanding that the orders you and Mr. Nussbaum were following came directly or indirectly from Mrs. Clinton?

Mr. NEUWIRTH. No, it was not, and I don't recall feeling that we were under orders from anyone.

Senator FAIRCLOTH. You were not under orders from anyone?

Mr. NEUWIRTH. I worked for Mr. Nussbaum and followed his directions to me. I did not have the sense that we, together, in the Counsel's Office——

Senator FAIRCLOTH. Where did you assume Mr. Nussbaum got his orders from?

Mr. NEUWIRTH. Mr. Nussbaum reported to the Chief of Staff and to the President, but my understanding was that he was responsible for making the decision about how to handle the review of documents in Mr. Foster's office.

Senator FAIRCLOTH. Mr. Neuwirth, did you learn from Clintons' lawyer Bob Barnett that he would be getting certain documents from Foster's office?

Mr. NEUWIRTH. I learned that he would be getting documents, yes.

Senator FAIRCLOTH. Can you tell us about that conversation?

Mr. NEUWIRTH. I had been at the Foster funeral on the Friday following his death. On the plane ride home I was approached by Mr. Barnett, who introduced himself and, in a brief conversation, he made reference to the fact that Williams & Connolly would be receiving files.

Senator FAIRCLOTH. Mr. Sloan, prior to working at the White House, had you known Mrs. Clinton or President Clinton?

Mr. SLOAN. No, sir.

Senator FAIRCLOTH. Were you present when Mrs. Clinton reviewed the note found in Vince Foster's briefcase that night?

Mr. SLOAN. No, sir.

Senator FAIRCLOTH. You were not there when she reviewed the note?

Mr. SLOAN. That's correct.

Mr. NEUWIRTH. Senator Faircloth, I can also confirm that Cliff Sloan was not there at that time and that he was not present at the time I found the note or in any of the subsequent discussions that took place in Mr. Nussbaum's office.

Senator FAIRCLOTH. Were you there when Mrs. Clinton looked at the note?

Mr. NEUWIRTH. Yes, I was.

Senator FAIRCLOTH. Did Mr. Nussbaum specifically ask you to be there?

Mr. NEUWIRTH. I had found the note. I was in his office, and Mr. Nussbaum did not ask me to leave. I was already there at the time she arrived.

Senator FAIRCLOTH. It would seem—and this is just a commentary—that this would be a very personal thing for Mrs. Clinton

to be reviewing this note and would have probably done it in private, but maybe that's the way I would have looked at it.

Have you ever discussed the events of the search of Mr. Foster's office with either Ms. Susan Thomases or Hillary Clinton?

Mr. NEUWIRTH. No, I have not.

Senator FAIRCLOTH. Mr. Sloan, to your knowledge, did Susan Thomases regularly call the White House Counsel's Office on matters relating to Vince Foster in his office?

Mr. SLOAN. I don't know about whether she regularly called about such matters.

Senator FAIRCLOTH. Finally, Mr. Sloan, did Mrs. Clinton ever discuss searching Vince Foster's office with you?

Mr. SLOAN. No, sir.

Senator FAIRCLOTH. To both of you, have you ever discussed the events of the search of Mr. Foster's office with either Susan Thomases or Mrs. Clinton?

Mr. SLOAN. No, sir.

Mr. NEUWIRTH. No, sir.

Senator FAIRCLOTH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I think we can finish up on your side, maybe.

The CHAIRMAN. Mr. Chertoff.

Senator SARBANES. Does Senator Grams have anything?

Mr. CHERTOFF. Mr. Neuwirth, I want to get your attention back on to Monday, July 26 and the days thereafter. Now, just to recapitulate, when you were in Mr. Nussbaum's office with the briefcase and the writing on July 26, Monday, Mr. Nussbaum came in; right?

Mr. NEUWIRTH. Mr. Nussbaum came in. As I told you earlier, I'm not certain whether I actually had the briefcase there.

Mr. CHERTOFF. You were there with the writing?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. Mr. Nussbaum came in?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. Mr. Burton came in?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. The First Lady came in?

Mr. NEUWIRTH. Yes.

Mr. CHERTOFF. Anybody else come in?

Mr. NEUWIRTH. I don't believe anybody else came in. As I said, we spoke to Mr. McLarty and Mr. Gergen by phone.

Mr. CHERTOFF. But the three people in the room with you and the piece of paper with the writing were Mr. Burton, Mr. Nussbaum, and the First Lady; is that correct?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. Now, you were interviewed by the Park Police later that week, on July 29; is that correct?

Mr. NEUWIRTH. I'm not certain. If there's a document which shows that was the date, I am not disagreeing.

Mr. CHERTOFF. I think there's a document in front of you that has that. It says interview Stephen Neuwirth.

Mr. NEUWIRTH. OK. That's fine.

Mr. CHERTOFF. You might want to get that.

Maybe we'll put it up on the Elmo here. If you look at the end of the first paragraph, you'll see, "Mr. Nussbaum was present and became the subject of the interview." Did you have Mr. Nussbaum present to kind of be counsel to you?

Mr. NEUWIRTH. Not that I recall.

Mr. CHERTOFF. It was happenstance; is that your testimony?

Mr. NEUWIRTH. No. It's possible that they wanted to speak to both of us.

Mr. CHERTOFF. And you were sitting there in the interview with Mr. Nussbaum; right?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. Do you have a memory of this, or are you just trying to go by what's in the document?

Mr. NEUWIRTH. I'm going by the fact that the document says that we were both present, and I don't have a basis for doubting the document.

Mr. CHERTOFF. Do you remember the interview?

Mr. NEUWIRTH. I don't remember it, but that doesn't mean that it didn't occur.

Mr. CHERTOFF. You accept that it occurred?

Mr. NEUWIRTH. I accept that it occurred.

Mr. CHERTOFF. Now, let's go down to the bottom here. It says, "Mr. Nussbaum then restated that the following people were contacted to view the document"—"contacted to view the document"—"before a determination could be made to disclose it to the U.S. Park Police." Of course, at the bottom we have Philip Heymann and Janet Reno, and you know on the 27th, which was the next day, the Deputy Attorney General and the Attorney General were shown the note?

Mr. NEUWIRTH. I only know that based on the fact I was told. I wasn't present.

Mr. CHERTOFF. But you accept that's correct; right?

Mr. NEUWIRTH. I don't have a basis not to, yes.

Mr. CHERTOFF. We also know that Lisa Foster was shown that on the 27th as well; right?

Mr. NEUWIRTH. That's my understanding.

Mr. CHERTOFF. Do you know whether Mr. McLarty had reviewed the note or had been contacted to view the note either on the 26th or the 27th?

Mr. NEUWIRTH. I actually, until I saw this document, never thought about whether Mr. McLarty ever saw the note. He certainly didn't in my presence.

Mr. CHERTOFF. You certainly know you spoke to him on the telephone?

Mr. NEUWIRTH. Yes, as I said several times.

Mr. CHERTOFF. He was read the note; right?

Mr. NEUWIRTH. I think that did happen on the phone call, yes.

Mr. CHERTOFF. Mr. Burton was in there with you and Mr. Nussbaum?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. Do you see the First Lady's name?

Mr. NEUWIRTH. I do not.

Mr. CHERTOFF. In this interview with the Park Police, did you make a point of mentioning that the First Lady had been apprised of the note?

Mr. NEUWIRTH. I don't recall the interview, and I don't recall what I said during the interview.

Mr. CHERTOFF. So I guess you didn't make a point in that interview of bringing that up. Is that fair to say?

Mr. NEUWIRTH. I can't conclude that at all.

Mr. CHERTOFF. Would you conclude that it's not in the report?

Mr. NEUWIRTH. It's certainly not in the report.

Mr. CHERTOFF. Now the next day, the FBI came in; right?

Mr. NEUWIRTH. I don't know what the chronology is.

Mr. CHERTOFF. Why don't you take a look at the 302 we looked at when we began the day with you, and let's get ourselves to the second page of that, which is FBI 19. I want to be very precise and careful about this, Mr. Neuwirth, because Senator Mack went into it at some length. Your testimony is that you answered the questions that were asked of you; is that correct?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. You do remember this interview; right?

Mr. NEUWIRTH. Yes, I do.

Mr. CHERTOFF. Where was it?

Mr. NEUWIRTH. In my office.

Mr. CHERTOFF. Who was present?

Mr. NEUWIRTH. I was present. If the agent's name was Mr. Salter, if I'm correct, he was present, and he was accompanied by someone else who I believe was also an FBI agent.

Mr. CHERTOFF. They must have asked you at some point what happened on the 26th; right?

Mr. NEUWIRTH. I answered—they asked me specific questions about what happened on the 26th, and I answered them.

Mr. CHERTOFF. Did they ask you the question of who came into the office on the 26th in Mr. Nussbaum's office while you were there with the writing?

Mr. NEUWIRTH. I don't remember the exact questions they asked me. I'm very confident that I answered to the best of my ability truthfully every question that they did ask me.

Mr. CHERTOFF. Did you have in your mind a notion that you were going to answer the questions in a very specific fashion, or did you have in your mind that you wanted to help them understand who was in the office on the 26th?

Mr. NEUWIRTH. I had in my mind that it was my obligation to be truthful and forthcoming in answering every question they posed to me, and that is what I did.

Mr. CHERTOFF. Truthful and forthcoming. That means not only literally true, but it also means to give whatever additional information is necessary so that the picture you drew would not be misleading. Is that fair to say?

Mr. NEUWIRTH. Mr. Chertoff, all I can tell you is that I answered every question that was posed to me. We don't have the questions here, and so I don't feel I'm in a position that I can assess what I was asked. But what I can tell you is I answered all the questions.

Mr. CHERTOFF. You just told us in your answer of a moment ago that it was in your mind to be truthful and forthcoming; correct?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. By forthcoming, you mean not only literally true in answering the question but supplying whatever information is necessary so that the picture presented to the FBI would be an accurate and complete picture rather than incomplete and misleading. Is that what was in your mind about being forthcoming?

Mr. NEUWIRTH. What was in my mind was to be truthful, to give complete answers to the questions that were asked of me, and to obviously do so in a way that was not misleading.

Mr. CHERTOFF. Then you tell us that you made a point at the end of the interview of bringing up the fact that the First Lady—why don't you tell us again. What did you say at the end of the interview concerning the First Lady?

Mr. NEUWIRTH. At the end of the interview, I included her as one of the people that I knew had seen the note, I believe, prior to the time that it was made available to law enforcement officials.

Mr. CHERTOFF. Is it your testimony now that you told the FBI agent that it had been made available to her to see?

Mr. NEUWIRTH. I don't know whether I used the word "see" or whether I used the word that she had been made aware.

Mr. CHERTOFF. Wasn't your testimony earlier this afternoon that you told the FBI agents that she had been made aware of the note?

Mr. NEUWIRTH. Yes, it was, and I think that is what I said. I am responding to your questions. I obviously don't have a transcript in front of me of what I said over 2 years ago, and I don't recall the exact words.

I am very confident that I let them know that the First Lady was one of the people who at least had been aware of the note prior to the time—and aware of its existence prior to the time it was made available to law enforcement officials.

Mr. CHERTOFF. But Senator Mack specifically asked you in the last couple of hours very specifically whether you told them that the First Lady had actually been in the room to see the note, and your testimony, as I recall it, is you answered Senator Mack's question no. Is that still your answer?

Mr. NEUWIRTH. Can you repeat what you just said, please?

Mr. CHERTOFF. Senator Mack asked you within the last couple of hours whether you told the FBI that the First Lady was one of the people who was brought in or who came into Mr. Nussbaum's office to see the note, and your answer to the Senator was no, that you hadn't told the FBI that. Are you now changing that testimony?

Mr. NEUWIRTH. First of all, I don't know—I really am not sure exactly what my interchange was with Senator Mack.

Mr. CHERTOFF. It will be in the record.

Mr. NEUWIRTH. I'm sure it will. I am not changing my testimony from this morning. I am attempting, without the benefit of having a transcript of the exact words I used 2 years ago, to give you my best recollection of the ultimate point that I mentioned during this interview, that the First Lady was one of the people. I believe I said she was aware of the note, but I'm not in a position to tell you

what my exact words are because I don't have—this was over 2 years ago.

Mr. CHERTOFF. It's you who told us in your answer earlier, Mr. Neuwirth, to Senator Mack's questions that you made a specific point and had a specific recollection of telling the agent at the end of the interview that the First Lady was someone who was aware of the note. Are you telling us now you didn't make a specific point and you don't have a specific recollection?

Mr. NEUWIRTH. I don't think I'm saying that at all, Mr. Chertoff. What I was saying to Senator Mack was that I was very conscious during the interview of being sure to mention the First Lady. I did not leave her out in my discussion.

I was not asked a question during the interview that covered her having entered the room and looked at or whatever happened in the room. I was not asked a question about her having come in. There was no question to which I thought that was responsive. That is why, when I had an opportunity to do so, I mentioned her, and I was not asked any follow-up questions about it.

Mr. CHERTOFF. And of course, it never made it into the report, as you can see in front of me; right?

Mr. NEUWIRTH. It certainly didn't make it into the report.

Mr. CHERTOFF. I have a couple more questions for Mr. Sloan, if I might, Mr. Chairman.

The CHAIRMAN. Go ahead.

Mr. CHERTOFF. Mr. Sloan, I want to take you back to July 22. Mr. Ben-Veniste and I think others have elicited—and I have no doubt about the truth of this—at great length how emotionally upset everybody was on the 22nd and how exhausted everybody was after the procedure where the Park Police were present and Mr. Nussbaum reviewed the documents; is that correct? Is that the state of mind?

Mr. SLOAN. Yes, sir.

Mr. CHERTOFF. In fact, Mr. Neuwirth——

Mr. Nussbaum evidently recognized how tired everyone was because he didn't insist that you begin the process of your inventory on that Thursday. He said you could take the weekend off; right?

Mr. NEUWIRTH. He did say I could take the weekend off.

Mr. CHERTOFF. He said come back on Monday. Take a rest. Let's not start the inventory now; correct?

Mr. NEUWIRTH. I don't know if he said take a rest. He certainly said take the weekend off.

Mr. CHERTOFF. He said take the weekend off; is that correct?

Mr. NEUWIRTH. That's correct.

Mr. CHERTOFF. He didn't push you into doing that inventory on that Thursday right before the trip to Arkansas the next day; right?

Mr. NEUWIRTH. Obviously not.

Mr. CHERTOFF. Yet, Mr. Sloan, your recollection is that, notwithstanding how tired and grief-stricken everybody was, notwithstanding the fact that the next day everybody was going to get up early to go to a trying funeral in Arkansas, notwithstanding everything that had gone on that day late in the afternoon on Thursday, the one request you wrote down in your notebook at the end of that procedure with the police was to get Maggie Williams in there and

go through the documents. Is that a correct assessment of what your notes tell us?

Mr. SLOAN. Yes, I believe that it is, Mr. Chertoff.

Mr. CHERTOFF. Did you say to Mr. Nussbaum, Bernie, what's the rush? Why do we have to get Maggie Williams in right now to go through the documents? Did you say that to him?

Mr. SLOAN. No, and as I indicated earlier, I don't remember that comment from Mr. Nussbaum. It's clearly in my notes, and I don't dispute your characterization of it.

Mr. CHERTOFF. Was there any reason the door couldn't have been locked and Maggie Williams could have come in the following Monday or even the following Tuesday to get the documents?

Mr. SLOAN. There's no reason that I know why that couldn't have happened.

Mr. CHERTOFF. Can you think of any earthly reason why that afternoon, after everything you've described so graphically about the emotional condition of people in the White House, why that afternoon Bernie Nussbaum had to have people make repeated calls to get Maggie Williams to come into that office to go through the documents with him, to collect the documents, to box them and to get Mr. Castleton in to take them up to the residence? Why did it have to be done that afternoon?

Mr. SLOAN. Mr. Chertoff, I don't know based on discussion of that afternoon, and I don't know of any reason, and I don't know all of the things that were in the question that you suggested. I had a conversation with Maggie Williams in December 1993 about the events of transporting the documents, but I don't know of a reason and didn't on July 22.

Mr. CHERTOFF. Can you think of any reason why it couldn't wait?

Mr. SLOAN. I don't personally know of any reason why it couldn't wait.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Senator SARBANES. Senator Kerry.

Senator KERRY. Can I ask, Mr. Neuwirth, I really don't know the answer to this, and I want to get some clarification, if I can. When was the first time that it became known that the First Lady came into the office during the perusal of the note?

Mr. NEUWIRTH. I don't know.

Senator KERRY. Can Counsel advise me of that?

Mr. CHERTOFF. I think we learned from Mr. Burton in a deposition within the last month, so far as I know.

Mr. NEUWIRTH. Was your question the first time you learned or the first time anybody learned?

Senator KERRY. Let's go through the sequence. When was the first time that it became public knowledge? Do you know the answer to that?

Mr. NEUWIRTH. I don't know when it became public knowledge. I certainly——

Senator KERRY. Do you recall when you first related it to anybody?

Mr. NEUWIRTH. I have to tell you that it's not clear to me the descriptions of the interviews necessarily cover everything that was said.

Senator KERRY. That's what I want to get at, but I'm trying to elicit this in an orderly way if it's possible.

Maybe I could ask Counsel for the Majority, does Counsel for the Majority have the questions that were asked by the FBI?

Mr. CHERTOFF. I think, Senator, as is standard in my experience, what the FBI prepares is a report called a 302.

Senator KERRY. So there are no questions, there's no record of questions.

Mr. CHERTOFF. I don't believe—of course, I wasn't at the interview, but I don't believe typically the FBI has a court reporter.

Senator KERRY. This is what I'm getting at because as I read this——

Mr. BEN-VENISTE. I think one thing that's been mentioned—although the FBI agent in question, Agent Salter, gave a deposition and, indeed, was here and testified, my recollection is that Counsel did not ask Agent Salter about the Neuwirth interview and particularly what was said.

It is my experience that very afternoon that the 302 reports, DEA 6 reports, all kinds of investigative reports are substantially less than any verbatim account of what actually goes on in an interview. There's always some editorial process, and with human beings, even if they want to be complete, they often are not so.

It seems to me that a suggestion, if this is really an important point—and I'm not sure myself as to what the relevance of it is—but if it is important, I think, Mr. Chairman, that we ought to ask the FBI and Agent Salter for his handwritten notes from which his report was prepared.

The CHAIRMAN. I think it's an excellent idea. I'll leave it to both Counsel to arrange that.

Mr. CHERTOFF. We will do that.

The CHAIRMAN. See if there are notes available and if you want to go further.

Mr. BEN-VENISTE. It may be helpful. It may not answer the question.

Mr. CHERTOFF. I think that's a good idea.

The CHAIRMAN. It may answer the question. Let's see if we can't do that.

Senator KERRY. If I can, the reason I ask it is that, simply, as I read what Counsel was reading from on page 2, it says, "Neuwirth advised that after reading the note Nussbaum left the office to see if he could find White House Chief of Staff McLarty, and he returned with Assistant Chief of Staff Bill Burton, and that then they decided to reach McLarty." He doesn't relate anything about them sitting down, putting the note together or any of the further sort of interim, which I don't know whether the question was posed to him or what, but it strikes me that what he's talking about is simply the sequence of who they notified——

Mr. CHERTOFF. Senator, I think on page 1 they discuss the assembly of the note in the office, actually.

Senator KERRY. Right, but not with a statement of who was there. He did that initially on his own, I believe, and then later—look, the important point I'm trying to get at is it seems to me—was it not the Assistant Chief of Staff, Mr. Burton, who, in deposi-

tion, made it known that Hillary Clinton came in? Is that not accurate, Mr. Neuwirth? Do you know the answer to that question?

Mr. NEUWIRTH. I apologize. If you could repeat it?

Senator KERRY. Was it not Mr. Burton, the Assistant Chief of Staff, who made it known during deposition that Hillary Clinton came into the meeting?

Mr. NEUWIRTH. I mentioned it during my own deposition.

Senator KERRY. You mentioned it in your deposition?

Mr. NEUWIRTH. At some length in my deposition.

Senator KERRY. At some length in your deposition, which I have in front of me, you also discussed it. But which came first? Do you recall?

Mr. NEUWIRTH. I don't know when Mr. Burton was deposed, and I've never seen the transcript of his deposition.

Senator KERRY. Burton's was before yours, and yours followed, I think, on July 10. At any rate, the White House made it known. I mean, that is——

Mr. NEUWIRTH. First of all, not only did I discuss it in my deposition before this Committee, but I've related this to the Special Counsels who have been looking into this matter as well. This is not something that's just come up today.

Senator KERRY. With respect to the note, the note again, you found that about 4 p.m. in the afternoon?

Mr. NEUWIRTH. That's my best recollection, Senator.

Senator KERRY. The initial decision made by Mr. Nussbaum with respect to the note, was there any discussion about notifying the Park Police at that point in time?

Mr. NEUWIRTH. Almost immediately.

Senator KERRY. Immediately, you're saying. At what time? When was that discussion?

Mr. NEUWIRTH. The note was put together. We got Mr. Burton. We had a telephone call with Mr. McLarty where that issue was first raised, and then the discussion was picked up again when Mr. McLarty called back with Mr. Gergen.

Senator KERRY. Why was that worthy of a discussion? It would seem to me that a note like that flashed instant red lights, get ahold of the police, let them know we've found a note.

Mr. NEUWIRTH. And as I told you, that was my reaction upon finding the note, that it was something that was appropriate to advise the investigators of immediately, but Mr. McLarty was very concerned, I believe, about being respectful to Mrs. Foster. I think in the conversation it pretty quickly came up that she was coming to Washington the next day, and an effort was being made to show her the note before it was turned over to any investigator so that, for example, she would not read about it in the press before having seen it.

Senator KERRY. At what point in time was the Attorney General, Mr. Heymann, called in?

Mr. NEUWIRTH. I don't know, but it was on the 27th, as I understand it.

Senator KERRY. The next day?

Mr. NEUWIRTH. That's correct.

Senator KERRY. Is there anything in that note—I've asked this question before, and I'm still trying to understand because people

are spending an awful lot of time on this note as if there was some reason for this note not to surface publicly. I find that very hard to understand why someone wouldn't want it to surface based on its contents, which the authenticity of which is simply not in question by anybody here. Is there anything in this note at all that gives you pause to believe that someone wouldn't want it to be public, apart from the personal nature of it?

Mr. NEUWIRTH. I'm not familiar with anything.

Senator KERRY. I beg your pardon?

Mr. NEUWIRTH. I'm not familiar with anything. I don't think there's anything in the note that creates a problem if it's made public.

Senator KERRY. What's your judgment as to that, Mr. Sloan?

Mr. SLOAN. Senator Kerry, from the time I heard about the note on the night of the 27th, it was anticipated that the note was going to be released promptly, and, in fact, that the White House was going to release it promptly and wanted to. The White House held up from releasing it, as I understood it, at the request of the investigative agencies.

So from the time I heard about it, the White House was pushing for prompt release of the note. I think people in the White House recognized there were going to be press questions. As Senator Dodd was mentioning before, the GOP, the press. People recognized there were going to be questions about what the meaning of the note was and that kind of thing, but from the time I heard about it, the White House was anticipating and was pushing for a prompt release of it.

Senator KERRY. I must say it's certainly very hard for me to believe that anybody would find fault with the notion that Vince Foster's wife, widow, should not have a right to see this note before it is in the public domain. I mean, that would be both insensitive and almost cruel. I think everybody here would agree to that. It does strike me—again, when were the Park Police called? Do you know?

Mr. NEUWIRTH. I don't, Senator, I'm sorry.

Senator KERRY. That's a matter of record, so I won't rely on your testimony for it. Thank you very much.

The CHAIRMAN. I think Senator Grams will be the last person on our side to have anything, but I would like to have the Senator's indulgence and make a couple observations and pose a couple of questions. I have to tell you that—and I believe Senator Bennett touched on some of these things, and he did it only as he can do it, in a very erudite manner—I have some difficulty understanding, and I certainly understand the inability to recall a particular interview.

I mean, you could ask me who I spoke to last week as it relates to an interview under much less stressful circumstances, and what I said or didn't say, and I couldn't give you total recall. I understand those kinds of things, and I think Senator Kerry made a good point. I don't question that, certainly, Mrs. Foster, the widow of Vince Foster, should have been given the opportunity to know that there was a communication obviously left by her husband before it was flashed on television, the question whether the FBI or the Jus-

tice Department was informed, whether that would have created that situation, but I have no argument with that, John.

I think that's a reasonable thing to attempt, and particularly when she's out of town. So it takes some time to get ahold of her. I have no problem about the 24-hour delay for those stated reasons. I really don't. But I do have some problems in understanding how it is that Ms. Gorham, Deborah Gorham—Mr. Neuwirth, do you know Deborah Gorham?

Mr. NEUWIRTH. Yes, I do.

The CHAIRMAN. Mr. Sloan, you know Deborah Gorham?

Mr. SLOAN. Yes, I do, Mr. Chairman.

The CHAIRMAN. If I characterized her as extremely capable and very loyal to her job and Vince Foster, would that be an accurate characterization?

Mr. SLOAN. Mr. Chairman, I didn't work with her on a day-to-day basis, but I have no reason to doubt that, but I want to make clear that I didn't work with her on a day-to-day basis.

The CHAIRMAN. Did you have an occasion to understand that she was a very talented and very dedicated worker?

Mr. NEUWIRTH. I knew Mr. Foster was pleased with the work she did for him.

The CHAIRMAN. I will tell you that all indications are, from what we've read—depositions, other people—that she was thought of and I tell you if you saw her demeanor, as a very capable, very conscientious person.

She did not get her job through political connections, not that there's anything wrong with that. I would be the last to say that. That she did not have such contacts and received a very sensitive position. I think is a testimony to her work. Here is where I have some problems.

She indicates to a coworker, Ms. Tripp, that she sees yellow pieces of paper in the bag. Ms. Tripp recalls that. Ms. Gorham does not recall actually communicating that to her, but she does recall seeing the paper in the bag. Mr. Nussbaum, on the very day that the note is discovered, on the 26th, I believe, calls her into his office and, in her words, and if you care for me to read them to you, I'll read them to you, interrogates her about what was in that bag. What did you see? Yellow. How many sheets, how many pieces of paper? She has a very vivid recollection.

Again, a coworker, who she had told earlier about this confirmed her observations. Now, Mr. Spafford, the Fosters' attorney, on the 22nd, is in Vince Foster's office after the review by Mr. Nussbaum of the documents, and he recounts quite clearly—how you Mr. Sloan stood up, approached Mr. Nussbaum and said to him there are pieces of paper, scraps of yellow paper—again comporting with the testimony we have received by others—in the bottom of the bag.

Then he recounts that Mr. Nussbaum says to you, in response to your observation, we will look at that later. Now, that is troubling. People are so anxious—and understandably so—to ascertain why Mr. Foster would do this to himself.

I have to ask the question: Wouldn't a reasonable person under those circumstances, given those citings by the Foster family attorney and Ms. Gorham, and given that Mr. Nussbaum knew she said

this because he asked her, what did you see? That is something that has not been satisfactorily explained to me by any of the witnesses who have testified. Maybe somebody will. Nor is it consistent with the testimony that you, Mr. Sloan, have given about this situation. So I just share my concerns and my observations with you.

Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you, Mr. Chairman.

Mr. Sloan, Mr. Neuwirth, I know it's been a long day, and the Chairman does not save the best for last. I can assure you that may be quite to the contrary. I probably have a small broom, but I wanted to followup on what the Chairman had to say. I know we have a vote on right now, so we can't be too long. I hope, like Mr. Simon's concern, your counsel hasn't kicked into overtime at 5 p.m.

But just in reading your depositions and listening to your testimony today to followup on what the Chairman was just saying, some comparisons between what you have said today, testimony that you have given contradicting some of the testimony that we've heard from others.

For example, Mr. Sloan, Mr. Spafford testified under oath that he heard you on the 22nd—again I'm going to be following up on the Chairman—tell Mr. Nussbaum there were scraps of paper at the bottom of the brief bag. Yet today you said in your opening statement you did not, but there's been other things you said you did not recall or didn't think you said at the time; you had forgot. You wrote in your notes—I'm looking at document 4001—that quote that the FBI agents expressed some skepticism; they had not seen anything in the briefcase. They also questioned that, but you said I told them the truth.

Mr. Spafford said in his sworn deposition that when Mr. Nussbaum put the brief bag on the desk to examine it, that it was, in his words, "stuffed, overflowing almost," but Mr. Sloan, you wrote in your notes about your interview at the FBI that, "The briefcase was relatively thin and that it wasn't bulging."

Ms. Tripp testified under oath that on the evening of the 26th Mr. Sloan came out of Mr. Nussbaum's office and asked if it was possible to remove a typewriter to bring it into Bernie's office. She went through a lot of details; it would have taken a lot of work to tear up the cords. Yet, Mr. Sloan, you've claimed that you did not know of the discovery of the note until July 27.

Mr. Neuwirth, the FBI interviewed you regarding the people in the White House who were made aware of the note. They quoted you as saying that Mr. Nussbaum, Mr. Burton, and Mr. McLarty were all aware of the note yet made no mention of the First Lady in this respect. Yet Mr. Neuwirth, in your sworn deposition of July 10, 1995, 2 years after the fact, you said specifically that Mr. Nussbaum showed the First Lady the note.

There were even points where the two of you seemed to contradict each other. Mr. Neuwirth, in your sworn deposition you said you saw Mr. Sloan talking to Mr. Nussbaum and later to Maggie Williams inside of Mr. Foster's office on the 22nd. You even said

that you saw Mr. Sloan and Mr. Nussbaum looking at documents in Mr. Foster's office.

Mr. Sloan, you say in your sworn deposition you were not involved in the second review on the afternoon of the 22nd with Mr. Nussbaum.

Now, I know we can conceive of times when people have different recollections over small, maybe unimportant details, but when you refuse to answer yes or no to questions or try to explain away many contradictions with the excuse that you don't recall, don't recollect the events or you were not aware—I'm not suggesting today that anybody is lying, but there are times, in fact, that we would all like to clear up these matters.

So, basically, I guess to make a long question shorter, how do you reconcile the differences between what you've said today and the days past, the sworn testimonies and depositions of others you've worked with? How would you put this in context for the American people if they were to ask you these same things after reading account after account and the discrepancies?

Mr. SLOAN. Senator Grams, all I can say is I've given my best recollection.

Senator GRAMS. Mr. Neuwirth.

Mr. NEUWIRTH. In all the examples you gave, I'm not aware of a discrepancy about—or an inconsistency in the way I've related my recollections here. To the extent that my testimony differs in some way from other people's recollections, all I can tell you is that I've tried my best to tell the truth.

Senator GRAMS. Let me go into a couple quick details or general effects. On the day that the review was taken in the office with the Department of Justice and other officials around, and as we saw in the graph or the diagrams where everybody was seated or standing, just in your general impression, I would ask both of you—Mr. Sloan first—do you feel that this was a good way to go about this? If you were sitting on the other side of the desk, would you have accepted this? I know this is the agreement you thought Mr. Nussbaum had worked out. But would you have been satisfied if you were Mr. Margolis or Mr. Adams or Mr. Heymann? Would you have been satisfied in trying to get at what was going on? Would you have taken for granted what Mr. Nussbaum was saying was on the paper and just setting it aside? There's a word—a phrase, trust but verify.

Mr. SLOAN. Senator Grams, I think it's important to remember what I understood the purpose of this review was, which was the purpose of it was to look for a suicide note or an extortion note.

Senator GRAMS. That isn't what the others thought that they were there for.

Mr. SLOAN. Well, I can't speak to that. I don't know that that's so. But it certainly was my understanding and the understanding of other people. My understanding of the understanding of other people there was that it was for a suicide note or an extortion note. I'm quite clear in my mind that I didn't have any sense at that time that the other people who were there thought that that was not the purpose of the review.

So the review was a very limited purpose: To look for a suicide note or an extortion note. And in that context, in light of all of the

competing concerns that we've discussed at length today, I think that the procedure that Mr. Nussbaum adopted was a reasonable procedure.

I have heard Mr. Nussbaum describe on a number of occasions that he had three choices. One of them was to keep people out of the office all together, while just he or people from the White House looked at things. Another was to open up all the files, and a third, middle option was to review the documents for the purposes of looking for a suicide note or an extortion note in the presence of other people, to give them a brief description, if they expressed an interest, they could see it later. And so I think that remains a reasonable balance under the circumstances.

Senator GRAMS. The office had already been gone through by three people the night before, the night of Mr. Foster's death, looking for this.

Mr. Neuwirth, would you have accepted this if you were sitting on the other side? Would you have said this was something that you had came for?

Mr. NEUWIRTH. I think if I had been one of the law enforcement officials, particularly from the Park Police, I might have objected if either Mr. Nussbaum or Mr. Margolis had played the role that Mr. Nussbaum played because I assume that as a Park Police official, my perspective might have been that I need to investigate Mr. Foster's death.

I think that the Justice Department and the White House both recognized that there was another set of interests that had to be taken into account in determining how to review the office. I think that Mr. Nussbaum was the only official out of the full set of officials who participated in the review who had ultimate responsibility, among other things, to protect the prerogatives of the Presidency, and I can tell you that people told Mr. Nussbaum in the days following Mr. Foster's death that he had a great burden on his shoulders with respect to the Presidency.

So in answer to your question, I understand how a law enforcement official might have felt uncomfortable. All I can tell you is that I think Mr. Nussbaum was attempting to reach the best accommodation he could of the competing interests that were at stake.

Senator GRAMS. Mr. Sloan, we know this to be true: That none of the notes of the search of the Foster office listed the Whitewater file including your own list. We have testimony from Ms. Gorham that says she saw a Whitewater file in the office. Officer O'Neill saw Maggie Williams carrying out a folder on the night of the death of Mr. Foster. Then the folder reappears in the law offices of Williams & Connolly. Could you explain that? Do you have any idea of how that could have happened?

Mr. SLOAN. First of all, in terms of my notes, my notes do contain references to the First Family's financial matters, so there are references——

Senator GRAMS. It didn't say Whitewater?

Mr. SLOAN. No, that's right.

Senator GRAMS. Ms. Gorham said it did.

Mr. SLOAN. OK. I'm just clarifying the record on that point. As to—and I'm not sure of all of the things that you included in your

question as to how I would account for them, but what I understand to have happened with respect to personal financial files is that they went to the residence for a few days and then went to Williams & Connolly.

Senator GRAMS. I know I'm going to wrap this up quickly. I'm going to end with Mr. Neuwirth and specifically about the note. Why did you think, when you saw these scraps of paper in the bottom of the briefcase that they were so important that this might have been the note? Why did that trigger something in your mind that said this is the note we've all been looking for? A suicide note, I would say, is usually something you lay out for somebody to find, not to tear up and not throw in the trash but in the bottom of a briefcase. Why did you think it was so important?

Mr. NEUWIRTH. I think all I've said today is that I found a note in Mr. Foster's handwriting that described issues that were of concern to him and it seemed to me that it could be a description of what was on his mind at the time that he died.

Senator GRAMS. But you hadn't put the note together yet before you called Mr. Nussbaum, or had you? You said he helped you arrange it on the table?

Mr. NEUWIRTH. I certainly was—when I found a document in Mr. Foster's handwriting that was torn up in the bottom of his brief bag, I felt that I should figure out what it was, and as I started to put it together, it was clear to me that it was a document in his handwriting and as soon as I reached that conclusion, I asked for Mr. Nussbaum to be contacted.

Senator GRAMS. So you felt that this maybe was the long lost note or the note that everybody had been searching for, or at least had some importance to it enough to call—where was Mr. Nussbaum, by the way, at the time you called him?

Mr. NEUWIRTH. I don't know. My sense is that he was somewhere in the West Wing of the White House because he came back to his office very quickly.

Senator GRAMS. I have no more questions.

Senator SARBANES. Mr. Chairman, if we could do a couple of questions on our side, we can conclude. I yield to Mr. Ben-Veniste and——

Senator DODD. Very quickly, I wanted to make an observation if I could as well, Mr. Chairman. The notion of discrepancies between people's testimony going back 2 years—my Lord, today we've had discrepancies about how to handle the briefcase here within the last 6 or 7 hours.

I say that not as criticism but just to point out that people can reach different conclusions about what happens within a relatively short period of time. Going back 2 years now to recall memories of what was specifically said is very, very difficult, and I think most people would agree with that.

Second, even if you accept—and I don't—but let's assume for a second that you did—that there was some great conspiracy regarding this note, take a look at the note. I think at some point we've got to, again, move the film forward. Is there anything in this note that in any way implicates, indicts, embarrasses the White House? Quite the contrary.

So that it seems to me before we draw a lot of conclusions about whether people planting the note, hiding the note, whatever their motivations may have been, at some point you've got to read the note and ask yourself whether or not there's anything in this note that in any way indicts, embarrasses, or implicates the White House in some wrongdoing.

In fact, the note does quite the contrary. Now, it seems to me from that point you can then go back and begin to look at people's motivations since we have the note in our presence and know what it says. I would point out again that there's nothing in this note that does that.

Having that information, it seems to me, does shed some light on whether or not there were bad motives, ill motives involved—on the part of those involved in the White House, so when you read the note, the only people that get indicted are The Wall Street Journal, the press and, with all due respect to our friends on the other side, the GOP. Those are the only indictments that occurred.

The rest, in fact, sheds a positive light on the White House. Why would anyone at the White House, if you've read this note, want to hide this note, keep it, or conceal it from anyone at all? It seems quite the contrary. So I make that observation because I think it's important, after we go through all these questions about it, to read the note.

Thank you, Mr. Chairman.

Senator SARBANES. I think just a couple questions by Mr. Ben-Veniste and I know we'll adjourn, Mr. Chairman.

The CHAIRMAN. Go ahead.

Mr. BEN-VENISTE. I would like to make one observation, Mr. Chairman, if I may, and then ask two questions. The observation is that with all due respect to the secretaries in the office and their recognition of what they had observed, it was the testimony of both of them that Ms. Gorham had seen some yellow papers in the bottom of the briefcase, she told that to Ms. Tripp.

Both of them were very eager to learn more about Mr. Foster and both of them dismissed as irrelevant the fact that they had seen these yellow papers in the bottom of the briefcase. It was simply something that they attached no significance to. They were looking for something other than what they thought they saw in the bottom of the briefcase.

Second, I would like to point out that with respect to the interview of Mr. Neuwirth—if we could put on the Elmo the Park Police interview—it seems clear to me, Mr. Chairman, that when Mr. Nussbaum in this interview, although the question was put to Mr. Neuwirth, Mr. Nussbaum related that the following people were contacted to view the document before a determination could be made to disclose it to the Park Police.

It seems to me that that list is modified by the language before a determination could be made to disclose it. So that the people who are listed, the Chief of Staff and his Deputy, Mr. Foster's widow, Mr. Heymann of the Justice Department, and Attorney General Reno were the people who were identified, not everybody who might have seen the note.

Finally, with respect to the procedure, if I understand your testimony, the procedure, in fact, proved useful for the police because

they asked for material beyond simply the suicide note, beyond any extortion note. When they got into the office, although this is what they initially said they were looking for, there were other things that they thought would be helpful, the calendar, the address book, the things that led them to talk to Mr. Foster's doctor and so forth.

I want to thank you very much for your testimony here today. I know it's been long.

The CHAIRMAN. Gentlemen, thank you for your testimony. We stand in recess until Monday, 11 a.m.

[Whereupon, at 5:40 p.m., the hearing was adjourned, to reconvene at 11 a.m., on Monday, August 7, 1995.]

[Appendix supplied for the record follows:]

APPENDIX

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

1 SYSTEM AFFILIATION: United States Park Police

2 NATURE OF INCIDENT: Death Investigation

3 CLASSIFICATION OF INCIDENT:

4 RESULTS OF INVESTIGATION:

Interview: Steven Neuwirth

Steven Neuwirth is an Assistant White House Counsel and the person reported to have found the note presumably written by Vincent W. Foster that was turned over to Detective L. J. Hegby on 7/27/93. The note had been discovered by Mr. Neuwirth during the packaging of Mr. Foster's personal effects on 7/26/93. On 7/29/93 at approximately 1130 hours, Steven Neuwirth was interviewed in Bernard Nussbaum's office by Detective Peter W. Markland and Captain Charles Hume. Mr. Nussbaum was also present and became a subject of the interview.

The following questions were posed to the two gentlemen regarding the note in question:

How could this note have avoided detection during the search of Mr. Foster's office by Mr. Nussbaum and other members of the White House Counsel's office in our presence on 7/22/93?

If the note was found on 7/26/93 why were the police not notified of it's existence until approximately 8:00 P.M. on 7/27/93?

Mr. Nussbaum stated it was his recollection that he removed materials from the briefcase, which remained on the floor, and placed them on the desk in front of him. He then went through the materials. He inferred that because of this he had missed the small scraps of yellow paper that obviously remained in the bottom of the briefcase. I informed Mr. Nussbaum that I was seated on the small couch directly across from and facing him and that I had a clear view of the briefcase when he removed it's contents, also that after the contents were removed I could see that he spread open the briefcase and visually inspected it as if to confirm that it was, indeed, empty. Mr. Nussbaum did not recall doing what I described. Captain Hume stated that he observed that Mr. Nussbaum handled the briefcase a third time when he slid it back towards the wall behind him in order to access the desk's file drawer. Mr. Nussbaum agreed with Captain Hume's recollection of sliding the case to the rear.

(7/A)

Mr. Nussbaum then related that the following people were contacted to view the document before a determination could be made to disclose it to the U. S. Park Police:

Bill Burton (Deputy Chief of Staff)
Thomas F. McLarty (Chief of Staff)
Lisa Foster (Wife of Vincent Foster)
Phillip Heymann (Deputy Attorney General)
Janet Reno (Attorney General)

8 ARTIS. ☐ YES ☐ NO | 9 ☐ LATENTS ☐ PHOTOS | 10 ID TECH NOTIFIED | 11 INVESTIGATOR NOTIFIED | PAGE 1 OF 2 PAGES

13 STATUS ☐ OPEN ☐ SUSPENDED ☐ CLOSED BY ☐ ARREST ☐ EXCEPTION ☐ UNFOUNDED

14 REPORTING OFFICER | BADGE/ID | DATE | 15 INVESTIGATOR | BADGE/ID | 16 SUPERVISOR | BADGE/ID | DATE 7/29/93

NATIONAL PARK SERVICE

SUPPLEMENTAL CRIMINAL INCIDENT RECORD

1 SYSTEM AREA: United States Park Police

2 NATURE OF INCIDENT: Death Investigation

3 CASE NO. 0 7 2 0 9 3 9 3 - 9 5 - 0 0 1 5 0 2

10 RESULTS OF INVESTIGATION

President Clinton was made aware of the existence of the document. Only Mr. Neuwirth and Mr. Nussbaum handled the document.

Mr. Neuwirth then related his recollection of the discovery of the document. He stated that he was in the process of gathering and packaging Mr. Foster's personal affects for delivery to the family when he turned the briefcase sideways in order to fit it into a box without causing damage to a photograph of the President with Mr. Foster's daughter, Laura. When he did this some torn yellow paper scraps fell out of the briefcase and he noticed handwriting on them. He then retrieved a number of other similar scraps from the bottom of the case and took them to the table in Mr. Nussbaum's office where he assembled the document which was, ultimately, turned over to Detective Megby.

Mr. Nussbaum was asked if he could clarify two entries on the handwritten note. "HRC" refers to the first lady; "MARI" refers to an interior decorator employed by Mrs. Clinton.

Mr. Nussbaum stated that there were only "three or four" work related documents on Mr. Foster's computer.

Inquiries were made regarding the phone logs kept at the office. Mr. Neuwirth stated that they had been assembled and that they will review them and contact us.

The interview concluded at approximately 1230 hours.

(7)

14 LATENTS: ☐ YES ☐ NO — ☐ LATENTS ☐ PHOTOS

16 ID TECH NOTIFIED

17 INVESTIGATOR NOTIFIED

18 PAGE 2 OF 2 PAGES

13 STATUS: ☐ OPEN ☐ SUSPENDED ☐ CLOSED BY ☐ ARREST ☐ EXCEPTION ☐ UNFOUNDED

14 REPORTING OFFICER — BADGE/ID — DATE

15 INVESTIGATOR — BADGE/ID — DATE

16 SUPERVISOR — BADGE/ID — DATE

Z000364

Bri

Videotape - 6/14/93 - [illegible]

Calendar

Newspaper Clip

Title 28 - USCode

User Is Manual - See phone

Docket - re: see calls

Directory - see phone

Telephone Log -

Hopo, Arkansas

Personal note - Updates - not - pertains see Sale -

7/30 - 3 calls -

~~Virginia~~ Fi

Document related to F. Virginia/re. trust - priv. legal advice

7000365

Note to UF re: legal research - healthcare -

corruption in courts - Kadagathy - bar -

Editorials - newspapers - privileged communication -
given by BN -

Legal paper - city/law

Malpractice / healthcare -

Corruption - internal investigation - in connection with Friedrichs -

letter in connection with Friedrichs - Mr. Swan's letter for confirmation

memo re: Swan Rhodes -

Insurance policies - property / casualty
- motor vehicle

letters having to do with Prakash -

Nora having to do with Friedrichs

Letter re: jobs

Single people want jobs

2000366

bet OF fina. disch for Repae Little Rock –

w H ~~[illegible]~~ funds

Contin edit

letts on labor / Pres

Matt in WH

matt in WH Chmn / Watkins

" " Ark. Gp. Pres

Reprint / Time. Leger Story

Health Care Story –

Offer / Govt. Exts Mail

Mem for Am / on Cond to Visit –

Letter in connect w/ Watkins

Mem re: WH

Notes: WH duties

2000367

Note = work-related

Magazines —

Memos — lent people in/out of the —

WH letter — WH Conf Affairs subject class

Intra-office memo —

Invitation

Calendar

Miscellaneous

letterhead —

Memo — Office Visitors

Memo - Invited to WH

Budget - [redacted] WH

Memo - Press Conf - Agenda

Letter re: Official duties

[redacted]

7000368

Memo to pm invoices file - draft complete -

Memo - in Cond's file -

Memo to BM - sent to V.C.

Memo for Sobel

Phonelog - [redacted]

Letter for Natl Archs

Letter/memo re: Cond file vol -

Memo re: typ obligors -

Note - memo a not -

List - April - Variables in the Cond's file -

Notes on [redacted] Cond's file -

- list of typ he's working -

- work/activity pp -

- staff he's interviewed - outside -

2000369

Various issues - ethics issues
People we've worked -

2/4/93 -
Drill issues
~~Res~~ Judicial appts -

Use Jud. awards -

Certificated -

Volunteers - use / volunteers -

Notes on transcription -

Lists possible people -

Tips to work on - Eva Cole -

Tape recorder - 1.5th to 4 -

Notes / meetings -

"Workways"

Note re: meeting

[redacted]

(#) Mayaguez – Revs – 2000370

– Expenditures – memorandum

– Rules re: Unauthorized Exp & Rec

– Disbursing – Excess Receipts – Expenditures – Gifts –

Work-related – assigns to be given in Ft.

– WHTC – Mayaguez Revs –

– Statutory Prohibitions

– Prov. Cities –

– Acceptance Gifts –

– Transit Pkg / Travel Expenses –

– WH Gifts – how to report WH gifts –

– Inaug meetings / ing. expenses –

– Memo re: postal. ee – Inaug Exp –

– Messages before there were pledges –

Statutory –

Z000371

Docs re: Exec Resdt + expns —

Legal opns — OLC legal opns — re. appts —

Memo — re Staff to Carter — transmittal —

Letter to Jud Mem from Sec. Def —

Newspaper articles — Natl Jnl —

1120 — Ark. papers —

Atlantic Constit

Article — 1113 —

Another article re: appt —

Entertainment expns — res. docs

Payroll records — re: travel —

Travel expenses —

Articles —

"Love's Spirit"

1000372

letter - Aug. 8 -
- Sandy asked to be given to Vice -

Martha has company - will come page : Jane -

memo - I ask to have Martha assist me -

List of people at work + addresses

Cards -

Unsigned letter to be for law firm -

Resume

List of people - using law firm - Work - related -

~~[redacted]~~

List - work - related - 2 sets -

List of phone #'s in office

Phone calls for Feb.

Checklists -

Work - related

[redacted]

Z000373

Bills —

Invitations to Govs —

Schools cal - pool —

Portable history room / purple hearts — may be chg mtgs from old fs —

Red file

Work - related

Passes

Active mtgs
info pkg
mailing - AFL - Trial Lyrs

Tel #'s - Cabinet mbrs

WH pool list

Intnl WH Tel. #'s

Old members - PR Sights - Advocates —

Z000374

Drawer - all mtls - work with -
sep index

Trash
- wastepaper -
- clip tray -

Work mtls -

WP Books

Morning News Tray -

File drawer
- all work - with
- "Readers" "Reports"

Work aides

Finance division

Various instructions or Finishing -

Index. reminders

Lost people - prepare books / prospective names -

Trays. Rep

7000375

Marie Wright –

"State Jobs Inside"

Quentels

Book Personnel ~~Work~~ Work Found Inside

Book a Cu In

Pocket Listing

Cult Mil. Fic –

Indic. Solids –

3/68 – Letter M. poster – maj Proj. Information W.A. –

Card –

Indic. Solid process –

Book – w.k. related –

Books –

Work-related –

Z000376

Pers. appts folders —

Briefing books

Res. files —
• Taxation
• Eng Flyer —

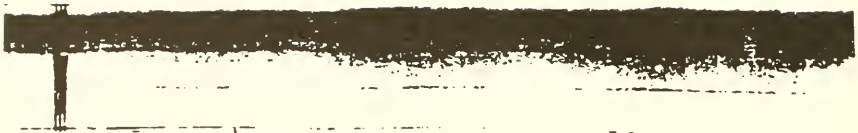
Official business
Certificates
Fund-raising
Fact File —

Projects in Ark.

Work-related · Health Care Task Force —

Speeches

- Address to DOEee's - 4/6
- Notebook: various legal issues —
- letters & articles
- L-Rev articles
- BBR - f-



- "Doctors Unlimited" Z000377
- Legal opinions
- Cases —
- Healthcare —
- Computer

Buy by

- USO
- Buffalinstyle —
- refers to job
- alphabetical —
- with personal
- employ staff —

Personal staff

Don Flynn, Secret Service 2000378
Paul Imbordino

Capt. Charles Hume, U.S. Park Police
Det. Pete Markham, U.S. " "

Scott Salter, FBI
Dennis Condon, FBI

David Margolis, DOJ
Roger Adams, DOJ

Mike Spafford, Fairfax

WH
Berne
Cliff
Steve Newirth
Bill Burt

get Maggie - gather Office - gather, Justice —

Brand Book -

Z000379

Z000380

Weed. - 4118

~~Nea~~ -

514-4482

2000540

Joel —
Here's the
current draft.
— Cliff

Clifford M. Sloan
Notes of Meeting
July 22, 1993
Page 1 of 16

BN

Videotape - 6/19/93 - Arkansas Bar Assn

Calendar

Newspaper clip

Title 28 - USCode

User's manual - secure phone

Document - re: secure calls

Directory - secure phone

Telephone directory -

Hope, Arkansas

Personal note - Volunteer - note - put to one side

7/20 - 3 calls

Documents related to First Family re: trust - privileged advice

THE WHITE HOUSE

WASHINGTON

May 26, 1994

Privileged and Confidential

MEMORANDUM FOR THE FILE

FROM: THOMAS E. CASTLETON
SPECIAL ASSISTANT TO THE COUNSEL
TO THE PRESIDENT

RE: Transfer of Contents in Deputy Counsel's Office

On or about November 10, 1993, Counsel to the President Bernard W. Nussbaum conveyed through his executive assistant Betsy Pond that he wished for me to catalogue, index, package, and transport the contents of Mr. Foster's West Wing office to the office of Associate Counsel William H. Kennedy III, located in the Old Executive Office Building.

The purpose of the task was to clear out the office in preparation for a newly appointed Deputy Counsel and for the further sorting and handling of these files. Ms. Pond explained that Mr. Kennedy should handle the contents of former Deputy Counsel Vincent Foster's office because Mr. Kennedy had enjoyed a close friendship with Mr. Foster and his family.

It was my understanding that certain documents and files had already been removed from Mr. Foster's office for the purposes of complying with ongoing or past investigations and were being held by either Mr. Nussbaum, another attorney on our staff, the First Lady, or the President and First Lady's personal attorneys. Shortly after Mr. Foster's suicide, I helped transport files originating in Mr. Foster's office to a room in the Residence. I had no other contact with files kept in Mr. Foster's inner office until I began the transfer of his office contents in early November.

In preparation for the project, I obtained a computer list of the files in each of the cabinets. The list had been compiled by Mr. Foster's assistant, Deborah Gorham. As I catalogued and packed the files on the list, I placed a mark next to each listing, which indicated that the file had been found in the designated cabinet. If the file had been found in another cabinet, I noted that on the list as well.

Z 000621

Additionally, I packed the items on Mr. Foster's bookshelves into several boxes. I also cleaned out the contents of Mr. Foster's desk and packed these along with Mr. Foster's briefcase inside another box. I did not specifically catalogue items on the bookshelf or in the desk. The box containing the items in

Mr. Foster's desk was packed separately from those boxes containing the items on the bookshelves.

I did not complete this phase of the project until November 17, 1993, when I transported the aforementioned boxes to Mr. Kennedy's office. In addition, I transported two separate and loose files. One of these files contained a VHS videotape. I handwrote a note relating to the contents of each of those files and placed it on the outside of the file with a paper clip.

In mid-December, the cabinets in the outer office of the Deputy Counsel containing Mr. Foster's subject files were cleared out for the use of newly appointed Deputy Counsel to the President Joel Klein. As with the files in Mr. Foster's office cabinets, the files contained in the outer cabinets were packed and transported to Mr. Kennedy's office. I indexed these files and posted a listing of the contents in each box on each lid.



Z 000953

To MAGGIE

Date 7/22/93 Time 3:25

WHILE YOU WERE OUT

M STEVE NEUWIRTH

of

Phone 2632

Area Code Number Extension

TELEPHONED		PLEASE CALL	X
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	

RETURNED YOUR CALL

Message

Operator

AMPAD EFFICIENCY® 23-023 CARBONLESS

To MELANNE

Date 7/22/93 Time 3:22

WHILE YOU WERE OUT

M Sydney Bloomenthal

of

Phone 296-5840

Area Code Number Extension

TELEPHONED		PLEASE CALL	X
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	

RETURNED YOUR CALL

Message

Operator

AMPAD

July 22, 1993

REDACTED

Z 001104

First Family - SF 278

First Family - 1994 Income Tax Returns

First Family - General

HRC - CLE/Arkansas Law License

First Couple - Blind Trust

First Family - Arkansas Home

POTUS - Arkansas Office

WJC - Passport

WJC - Papers

First Family - SF278 pre-POTUS



July 22, 1993

REDACTED

Z 991118

First Family - SF 278

First Family - 1994 Income Tax Returns

First Family - General

HRC - CLE/Arkansas Law License

First Couple - Blind Trust

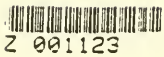
First Family - Arkansas Home

POTUS - Arkansas Office

WJC - Passport

WJC - Papers

First Family - SF278 pre-POTUS



Z0000354

Don Flynn, Secret Service
Paul Imbordino

Capt. Charles Hume, U.S. Park Police
Det. Peter Markham, U.S. Park Police

Scott Salter, FBI
Dennis Condon, FBI

David Margolis, DOJ
Roger Adams, DOJ

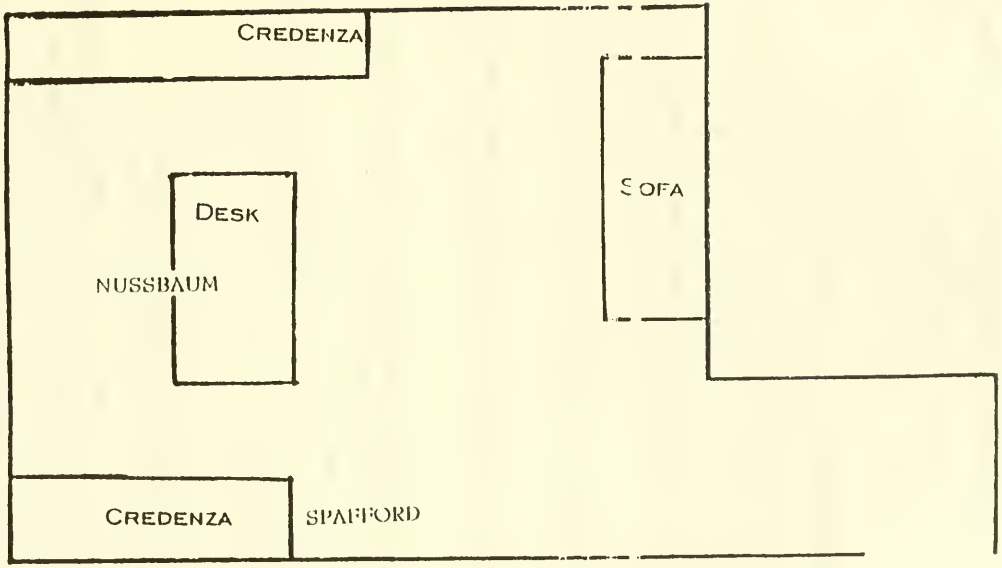
Mike Spafford, family

WH

Bernie
Cliff
Steve Neuwirth
Bill Burton

get Maggie - go thru office - get HRC, WJC stuff

OFFICE OF VINCENT FOSTER



Contradictions, Inconsistencies and Changes
in
Testimony
of
Henry O'Neill, Secret Service Officer

Contradictions and Changes in Deposition Testimony

Officer O'Neill provided deposition testimony under oath to the Special Committee on June 23, 1995. A review of Officer O'Neill's deposition testimony evidences the following internal contradictions.

1. Different testimony as to the number of people O'Neill saw enter the White House Counsel's suite after it was opened by the clearing crew.

At pages 38-9, Officer O'Neill testifies that while speaking with Howard Pastor in the hallway outside the Counsel's Office he saw unidentified people in addition to Bernard Nussbaum enter the office.

Later, at pages 132-33, O'Neill testifies that he didn't see anyone other than Nussbaum enter the White House Counsel's Office.

2. Different testimony regarding the number of voices Officer O'Neill heard in the Counsel's Suite.

At page 38, Officer O'Neill testifies that he heard "voices...women's voices in" the Counsel's suite the night of July 20th.

Later, at pages 101 and 106, O'Neill testifies that he heard a single woman's "voice" coming from the Counsel Office.

3. Different testimony regarding the time that Officer O'Neill saw Patsy Thomasson in David Watkins doorway.

At page 73-79, O'Neill testifies that, after his second of three visits to the Counsel's Office the night of July 20th, he went down to the first floor of the West Wing and soon thereafter saw Patsy Thomasson in the door to Watkins office.

He testifies again, at page 102, that he saw Ms. Thomasson after his second visit to the Counsel's Office and before the office was locked.

Later, at page 163, he testifies that he saw Ms. Thomasson in the door to Watkins' office but that this was after his third,

and last, visit to the Counsel's Office.

4. Contradictory testimony as to whether Officer O'Neill saw Ms. Thomasson in the doorway of David Watkins office.

O'Neill's testimony concerning seeing Ms. Thomasson at the Watkins office doorway after his last, third visit to the Counsel's Office is contradicted by his testimony at pages 94-5. There O'Neill testified that he did not see Ms. Thomasson after locking the Counsel's Office on the evening of July 20th.

Contradictions and Changes in Deposition and Hearing Testimony

5. Different versions as to whether and under what circumstances Officer O'Neill saw Maggie Williams.

At pages 80-81, Officer O'Neill testified that he saw Maggie Williams leave the Counsel's Office carrying a 3-5 inch stack of file folders.

Later, at pages 175-6, O'Neill testified that he was confused, that he could not remember if he saw Ms. Williams leaving the Counsel's Office, that she may have been carrying a box, like a small hat box, on top of file folders.

Later in his hearing testimony Officer O'Neill described the box as a small hatbox, page 100.

Still later in his hearing testimony, Mr. O'Neill amended his earlier testimony, at page 104, saying, "Just strike the hatbox."

6. Testimony regarding whether Officer O'Neill saw or spoke with the cleaning women on his second entering of the Counsel's Suite.

O'Neill, when asked whether he saw the two cleaning women when he went to the Counsel's Office the second time on July 20th, testified at page 157-8 "I do not recall if they were there."

O'Neill then abruptly changed his testimony and stated that "Actually, I think I spoke with them, yes."

7. Testimony regarding whether Vincent Foster's office was cleaned and whether his unclassified trash bag emptied that evening.

O'Neill testifies, at pages 52-3, in response to multiple questions, that the cleaning crew he accompanied on the night of

July 20th to the Counsel's suite did in fact clean Vincent Foster's office.

Officer O'Neill repeated this testimony in his Special Committee hearing testimony at page 49, testifying that the cleaning crew did not enter Vincent Foster's office.

There is testimony by several White House employees, including Sylvia Mathews, at pages 57-61, and Bernard Nussbaum, at page 217, that a trash bag containing trash that had come from Vincent Foster's office was found in a common trash area outside the Counsel's Office.

8. Different recollections under oath regarding collection of White House Counsel's Office Suite classified burn bags.

O'Neill testified to the Committee at the hearing, at page 27 of the Hearing Transcript, that he could not recall if he collected the burn bag material from the Counsel's Suite. (O'Neill was the only person in the White House Counsel Office cleaning crew authorized to clean burn bags.)

Yet, in his deposition testimony, at pages 147-8, O'Neill testified that he was confident that he never emptied any of the burn bag material from the Counsel's Office ("I never did").

9. Contradictions in testimony as to whether Mr. Foster even had a classified burn bag.

O'Neill's deposition testimony, at page 24, was that there <u>was</u> a burn bag in Vincent Foster's office.

Yet, before the Special Committee, page 14, Officer O'Neill testified that he could not recall whether there was a burn bag in Foster's office.

10. Contradictory testimony as to whether O'Neill read newspaper reports regarding documents being taken from Mr. Foster's office.

At his deposition, O'Neill testified, at page 106, that after July 20th he read newspaper articles about documents being taken from the counsel's office, "In fact, I think by Maggie Williams, in fact."

O'Neill at first testified, at page 84, before the Special Committee testimony that he "had never read anything about anyone taking any files out of any office." Then, later, at page 121, later he testified that he had read something about the matter.

11. Officer O'Neill's Special Committee testimony and his

deposition testimony provide three versions of Evelyn Lieberman's identification of Maggie Williams.

The differences suggest that Officer O'Neill may be susceptible to suggestion or influence through information he learns subsequent to an event.

For example, at the hearing Officer O'Neill testified, at page 23, that Ms. Lieberman told him that Ms. Williams was "the First Lady's chief of staff." Officer O'Neill's deposition testimony, at page 80, was that Ms. Lieberman only introduced Ms. Williams as "Maggie Williams."

Yet at his deposition, at page 172, Officer O'Neill testified that Ms. Williams had been introduced by Ms. Lieberman as the "First Lady's secretary."

BOSTON PUBLIC LIBRARY
3 9999 05577 422 6

ISBN 0-16-055157-9
90000
9 780160 551574